

The welfare-delay paradox child maintenance, education, parental responsibility and judicial delay in Nigeria: A comparative study

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Abstract

The welfare of children may be undermined when family-law proceedings remain unresolved for prolonged periods. This article develops the welfare-delay paradox to explain how judicial delay can alter the developmental, educational and material circumstances a court must protect. Focusing on child maintenance and education, it examines an anonymised Nigerian proceeding involving four children whose educational circumstances changed substantially while litigation continued. The article adopts a doctrinal, comparative and normative methodology, examining Nigerian law alongside authorities from England and Wales, Scotland and Ireland and international children's-rights standards. It argues that parental financial responsibility should be assessed not only by legal entitlement and parental means, but also by the temporal effectiveness of judicial relief. It proposes early case management, interim maintenance, enforceable educational orders and stronger accountability for delay.

Keywords: Welfare-delay paradox, child maintenance, education, parental responsibility, judicial delay, child welfare, children's rights, Nigeria, comparative family law

Introduction

Family law imposes continuing responsibilities upon parents, but the practical enforcement of those responsibilities depends upon institutions capable of responding within the period in which children actually need protection. This is particularly clear in disputes concerning maintenance and education. A parent may have a legal obligation to contribute to a child's welfare, yet the child may move from one educational stage to another while the claim remains pending. School fees may fall due repeatedly, university expenses may accumulate and a child may complete an educational programme before the court has made a final order.

The central problem examined in this article is therefore temporal. A court may legitimately require time to determine disputed facts, assess financial circumstances, hear both parties and protect procedural fairness. Yet the passage of that time can itself transform the circumstances to which the litigation relates. The child's age, educational status, financial needs and dependency may change; arrears may accumulate; and the practical value of the eventual remedy may decline. The welfare-delay paradox describes this tension between the time required for fair adjudication and the potential welfare consequences of the delay necessary to achieve it.

The problem is particularly acute in maintenance and educational claims because educational needs are dynamic. A child's needs at the commencement of proceedings may be different several years later. Tuition may increase, a child may move from secondary school to university, a university student may progress from first year to final year, and a child may graduate before liability is finally determined. A judgment delivered at the end of such a process may be legally significant but temporally incomplete: it may establish responsibility for the past without providing the protection required at the time when the child actually needed it.

The principal Nigerian case study is an anonymised pending proceeding in which a mother sought financial responsibility from the father of four children for their welfare and education. According to the mother's account, the father left the family and returned to his first wife and relied, among other matters, upon his status as a pensioner in resisting or limiting financial responsibility. Because the proceedings remain pending, these matters are presented only as allegations or positions attributed to the parties and are not treated as established facts. What is relevant for this research is the children's educational progression during the litigation: one completed university; another, who commenced Medicine at 100 level, progressed to the fifth year; a third child studying Nursing graduated; and the fourth reached the fourth year of university.

The case raises a wider question: what is the value of a family-law remedy when the children whose welfare was the subject of the proceedings have materially changed their educational and developmental circumstances before the court has determined the claim? The issue is not confined to the parties' conduct or financial means. It concerns whether the legal process can provide a remedy while the relevant educational need remains current and whether an eventual order can still serve the purpose for which relief was originally sought.

The article adopts a doctrinal, comparative and normative methodology. Nigerian constitutional and statutory rules are considered alongside Supreme Court and Court of Appeal authorities on maintenance, education and welfare. The analysis is then compared with selected authorities from England and Wales, Scotland and Ireland. England and Wales provide an express statutory recognition that delay may prejudice child welfare; Scotland offers a distinct framework of parental responsibilities directed towards children's health, development and welfare; and Ireland provides a particularly relevant maintenance framework for dependent children in full-time education and for assessing parental financial resources.

The Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child provide an additional normative framework. The article is guided by three questions: when does delay in a child-maintenance or educational dispute become substantively relevant to welfare; how should parental financial capacity, including retirement and pension income, be balanced against continuing educational needs; and what procedural and remedial mechanisms can prevent delay from diminishing the effectiveness of the eventual remedy?

The article's principal contribution is to conceptualise time as a substantive dimension of family justice and to develop the welfare-delay paradox as a framework for analysing that phenomenon. It argues that Nigerian family justice should move towards earlier case management, effective interim maintenance, precise educational orders, proportionate assessment of parental means, prompt enforcement and continuing judicial attention to changing child circumstances.

Access to Justice and the Temporality of Family Rights

The modern concept of access to justice developed partly as a response to the limitations of formal equality. A legal system may proclaim equal rights while structural barriers prevent people from using them effectively. Cappelletti and Garth's influential work placed practical effectiveness at the centre of the access-to-justice movement, emphasising the ability of individuals to vindicate rights and obtain remedies rather than merely possessing rights in theory ^[1]. This insight is particularly relevant to family law, where the costs of ineffective justice may be borne by children as well as litigating adults.

In family proceedings, access to justice has at least five dimensions. The first is legal accessibility: the existence of a clear legal right and an identifiable forum. The second is economic accessibility: the capacity to obtain advice, representation and evidence without prohibitive cost. The third is procedural accessibility: procedures must be understandable, proportionate and sensitive to the circumstances of children and vulnerable parties. The fourth is temporal accessibility: the dispute must be determined within a period that is compatible with the nature of the right and the child's developmental circumstances. The fifth is remedial accessibility: the decision must be capable of implementation and enforcement.

Temporal accessibility deserves separate recognition because time can affect the value of the underlying right. A right of access to a child is not equivalent to a monetary debt. The longer an appropriate relationship is interrupted, the greater the possibility that the eventual remedy will not restore the relationship to its previous condition. Likewise, a child-protection application may become more difficult to remedy if a harmful situation persists for a prolonged period. Delay may thus diminish the practical value of a right even where the right remains legally recognised.

The traditional image of access to justice as a pathway from claim to judgment is therefore incomplete in family law. A more appropriate model is a continuum: information, advice, representation, early intervention, interim protection, substantive hearing, judgment and enforcement. Failure at any stage may undermine the effectiveness of the whole system. In child-related disputes, early case management is particularly important because interim decisions can preserve relationships and prevent the litigation itself from

changing the factual circumstances in ways that complicate the final determination.

The Nigerian context demonstrates the significance of this broader approach. Constitutional fair-hearing guarantees, statutory welfare provisions and judicial principles provide a normative foundation, but their practical effect depends on institutional capacity. Court congestion, cost, limited legal aid, geographical disparities, adjournments, delayed judgments and difficulties in enforcing family orders can all reduce effective access. The relevant question is therefore not whether Nigeria has family-law rights, but whether its justice institutions can deliver those rights in forms that remain meaningful to children and families.

Integrated Theoretical Framework

Access to Justice Theory

Access to Justice Theory supplies the institutional foundation of this article. Its central concern is the gap between formal legal rights and their practical enjoyment. In family law, the gap can arise at the point of entry into the justice system, during proceedings, or after judgment. A parent may know that an application for access is legally possible but lack resources to pursue it. A child may have statutory rights but no effective mechanism through which those rights are communicated to the court. A successful litigant may obtain an order that is difficult to enforce. Access to justice therefore requires attention to the entire institutional process.

The theory also exposes the importance of procedural design. Rules concerning service, evidence, adjournments, interlocutory applications, case management and appeals may appear neutral but can have different consequences depending on the nature of the dispute. In child-related cases, the cost of procedural delay is potentially borne by a person who is not responsible for the litigation and may have limited ability to influence it: the child. This creates a justification for differentiated procedures in family justice, including priority listing, early welfare assessment and proportionate case management.

The temporal dimension proposed here is not inconsistent with conventional access-to-justice theory. Rather, it extends the idea of effectiveness. If a legal remedy is so delayed that its practical value is materially reduced, formal access has not necessarily translated into effective access. The proposition is especially persuasive where the legal interest is time-sensitive. Childhood, pregnancy, early development and family relationships provide examples of interests whose value cannot always be preserved by a remedy granted at a later date.

Therapeutic Jurisprudence

Therapeutic Jurisprudence, principally associated with David Wexler and Bruce Winick, examines the extent to which law and legal processes affect psychological and social well-being ^[2]. The theory does not ask judges to become therapists or to subordinate legal rights to therapeutic objectives. Its contribution is methodological: it encourages legal decision-makers to identify the therapeutic and anti-therapeutic consequences of legal rules, procedures and institutional behaviour and to consider whether avoidable harm can be reduced without compromising justice.

Family proceedings are particularly suitable for a therapeutic-jurisprudential analysis because the parties

frequently remain connected after litigation. A court may determine custody but cannot terminate the social reality of co-parenting. A judgment may regulate contact, yet parents may continue to encounter one another at school events, medical appointments and family occasions. An excessively adversarial process may therefore make post-judgment compliance more difficult. Conversely, respectful judicial communication, clear orders, early resolution of factual issues and appropriate mediation may reduce conflict and improve the prospects of sustainable compliance.

Therapeutic Jurisprudence also provides a vocabulary for analysing delay. The legal effect of delay may appear neutral, but the human effects may not be. Repeated adjournments can prolong uncertainty, increase legal costs and entrench hostility. For children, uncertainty can affect schooling, routines and relationships. The theory therefore reinforces the argument that family courts should assess not only whether a procedural step is legally permissible but also whether it is proportionate to the likely therapeutic and anti-therapeutic consequences.

The theory must nevertheless remain bounded by legal principle. A judge cannot deny a party a fair hearing merely because doing so would produce a faster or apparently more therapeutic outcome. Nor can mediation be imposed where there is coercive control or a serious safeguarding concern. Therapeutic Jurisprudence is therefore best understood as a supplementary lens that operates within due process, equality, judicial independence and substantive rights.

The Best Interests of the Child

The best-interests principle supplies the substantive welfare dimension of the framework. Article 3 ^[1] of the CRC requires the best interests of the child to be a primary consideration in all actions concerning children. General Comment No 14 explains that the principle operates as a substantive right, an interpretative legal principle and a rule of procedure ^[3]. This tripartite character is important because it means that welfare is not merely an outcome to be considered at the end of a case. The procedure used to determine welfare must itself provide appropriate safeguards.

As a substantive right, best interests require decision-makers to give the child's interests genuine priority. As an interpretative principle, the standard assists in resolving ambiguity in legislation and policy. As a procedural rule, it requires an assessment of the likely positive and negative consequences of alternative decisions and an explanation of how the child's interests were considered. A court that decides a custody dispute without adequate evidence, without hearing relevant information about the child's circumstances or after a prolonged period of unexplained inactivity may therefore face a question not merely of efficiency but of whether the welfare assessment remains adequate.

The best-interests principle is not an invitation to disregard parental rights. General Comment No 14 recognises that children's interests may conflict with the interests of parents and other persons and that such conflicts require careful balancing ^[4]. The correct approach is therefore neither parent-centred nor child-isolated. It is a welfare-centred process in which the child's independent interests receive high priority while legitimate parental and family interests are considered consistently with the child's rights and safety.

Children's Rights Theory

Children's Rights Theory complements the best-interests principle by treating children as independent rights-holders. The child is not simply the subject matter over which adults litigate. The child possesses rights to non-discrimination, development, participation, protection and, subject to applicable law and welfare considerations, family relationships. Article 12 CRC requires that children capable of forming views be given an opportunity to express those views in matters affecting them, with appropriate weight given to their age and maturity.

This perspective changes the language of family litigation. Instead of asking only which parent has the stronger claim, the court should ask what arrangement best protects the child's rights and welfare, how the child's views can appropriately be ascertained, and what procedural measures are required to prevent the child from bearing the burdens of adult conflict. Children's rights theory therefore strengthens the argument for specialised procedures, representation or independent advocacy where appropriate, and safeguards against placing children in the position of choosing between parents.

The four theories operate cumulatively. Access to Justice Theory asks whether the system is accessible and effective. Therapeutic Jurisprudence asks what effects the process produces. The best-interests principle asks what outcome should receive priority. Children's Rights Theory asks whether the child is treated as a rights-holder throughout. Together they provide the conceptual architecture for the welfare-delay paradox.

The Welfare-Delay Paradox: Concept, Dimensions and Originality

The welfare-delay paradox is proposed in this article as an original analytical concept. It describes the situation in which a legal system requires time to gather evidence, hear competing accounts and make a careful welfare determination, while the passage of that time may itself change the child's circumstances and undermine the welfare interests that the court is required to protect.

The paradox has a temporal dimension because childhood is continuous and irreversible. It has a relational dimension because family relationships can change during litigation. It has a psychological dimension because uncertainty and conflict may affect emotional well-being. It has an evidential dimension because facts, witnesses and circumstances may change. Finally, it has a remedial dimension because a judgment may arrive too late to restore a lost relationship or undo a period of harmful circumstances.

The paradox should not be confused with a claim that every delay is unlawful. Family proceedings can be complex. Allegations of abuse may require careful investigation; expert evidence may be necessary; a child may need time to express views safely; and a respondent must be given a fair opportunity to answer allegations. The relevant issue is proportionality. Delay should be evaluated against the child's age, the urgency of the issue, the risks involved, the reason for the delay, the availability of interim relief and the likely consequences of postponement.

The concept is particularly supported by English statutory law. Section 1 ^[2] of the Children Act 1989 provides that in proceedings concerning the upbringing of a child the court shall have regard to the general principle that delay in

determining the question is likely to prejudice the welfare of the child ^[5]. This provision is significant because it expressly transforms delay from a purely administrative concern into a factor relevant to welfare.

The UK Supreme Court's decision in *ANS & Anor v ML* provides a further illustration. The adoption proceedings concerned a child whose childhood was passing while the legal dispute remained unresolved. The Court's discussion emphasised that a child has only one childhood and that prolonged proceedings can cause anguish and potentially irreversible consequences ^[6]. The case was an adoption case, not a parental-access dispute, and should therefore be used by analogy. Its value lies in the Court's recognition of the temporal nature of childhood and the possibility that delay may itself alter the substance of the dispute.

The welfare-delay paradox can therefore be expressed as follows: the longer a child-related dispute remains unresolved, the greater the possibility that the court will ultimately be deciding a materially different welfare situation from the one that existed when the proceedings commenced. Delay can become an intervening factor in the factual matrix. The court may be required to assess the consequences of the delay as part of the current welfare assessment, even though the delay was not itself the original subject of the litigation.

This proposition has implications for remedies. Suppose a parent seeks contact and the court ultimately determines that contact is appropriate. If the determination is made after a prolonged period during which no contact occurred, the eventual order may not fully restore the lost period. The child cannot be returned to the earlier age, and the parent-child relationship may require rebuilding rather than simply resuming. The legal remedy remains relevant, but its remedial adequacy has been reduced by time. This is why temporal accessibility should be recognised as an element of substantive family justice.

The paradox also cautions against treating interim orders as secondary. An interim contact arrangement, where safe and appropriate, may preserve the possibility of meaningful final relief. Conversely, an interim arrangement that is allowed to continue for an excessive period without substantive determination may become practically determinative. Case management must therefore consider both the risks of premature intervention and the risks of allowing interim circumstances to harden into the status quo.

Nigerian Constitutional and Statutory Framework

The Nigerian Constitution provides the general framework for procedural and substantive justice. Section 36 guarantees fair hearing within a reasonable time by a court or tribunal established by law. The concept of reasonable time cannot be understood independently of the nature of the dispute. In a child-related proceeding, the child's developmental circumstances provide an important context for evaluating whether a period of delay is reasonable.

Section 17 contains constitutional objectives concerning social order and welfare, while sections 34, 42 and related provisions provide important dignity and equality protections. Although the Constitution does not establish a comprehensive family-law code, constitutional rights shape the manner in which statutory family-law powers should be exercised. The family justice system must therefore operate consistently with dignity, equality, fair hearing and protection from discrimination.

The Matrimonial Causes Act 1970 remains central to proceedings involving children of a statutory marriage. Section 71 ^[1] provides that in proceedings concerning the custody, guardianship, welfare, advancement or education of children of a marriage, the court shall regard the interests of those children as the paramount consideration and may make such order as it considers proper. Section 71 ^[2] permits the court to adjourn proceedings to obtain a welfare report where appropriate ^[7]. The provision establishes welfare as the controlling consideration while recognising the need for evidence-based judicial decision-making.

The statutory language is important for the present thesis. If welfare is paramount, the court's exercise of procedural discretion should be directed towards obtaining a reliable welfare assessment without allowing the procedure to create avoidable welfare prejudice. Section 71 does not expressly state a general rule equivalent to section 1 ^[2] of the UK Children Act, but the welfare principle can reasonably be interpreted as requiring attention to the temporal consequences of case management, especially where the dispute concerns ongoing relationships between a child and a parent.

The Child Rights Act 2003 provides a broader rights-based framework. Section 1 establishes the best interests of the child as a primary consideration in every action concerning a child. Section 69 provides for court orders concerning custody and rights of access, having regard to the welfare of the child, the conduct of the parents and their wishes ^[8]. The Act also provides for Family Courts and child-sensitive procedures. Its provisions should be read alongside Nigeria's international obligations under the CRC and the African Charter on the Rights and Welfare of the Child.

The operation of child-rights legislation in Nigeria must, however, be approached with constitutional and federalism sensitivity. The Child Rights Act is federal legislation and implementation has historically required attention to state-level legislative structures. Accordingly, an international article should not assume that the practical availability of every CRA mechanism is identical in every state. The more defensible proposition is that the federal statute provides an important normative and legislative benchmark, while state enactments and institutional arrangements determine aspects of local implementation.

This distinction is relevant to access to justice. A statutory right that exists in principle but is difficult to invoke because of institutional fragmentation is an example of the gap between formal and effective access. Reform should therefore focus not only on legislation but on judicial infrastructure, trained personnel, legal aid, enforcement and procedural coordination.

Nigerian Judicial Approach to Welfare, Custody and Access

Nigerian appellate jurisprudence has long recognised that child welfare, rather than parental entitlement, is the controlling consideration in custody disputes. In *Williams's v Williams*, the Supreme Court considered section 71 of the Matrimonial Causes Act and approved the principle that custody involves the preservation and care of the child's physical, mental and moral welfare ^[9]. The Court recognised that custody, education and welfare are interrelated and should not be treated as wholly separate questions.

Williams is significant for the present analysis because it rejects a purely adversarial conception of custody. The

parent is not awarded custody because the parent has a superior proprietary claim. The court's task is to determine an arrangement that serves the child. This provides a doctrinal foundation for the proposition that procedural decisions during the litigation should likewise be evaluated from the perspective of the child's welfare.

Falobi v Falobi is also relevant to parental access. The Supreme Court considered the statutory power to make orders concerning custody and the right of access to a child and recognised the welfare-centred nature of that jurisdiction^[10]. The case demonstrates that access is not an incidental issue but an aspect of the court's broader responsibility to regulate the child's welfare and family relationships.

The statutory structure reflected in these cases is important. Parental access is not an absolute right that overrides welfare and safety. At the same time, the absence of custody does not automatically extinguish the possibility of meaningful parental involvement. The court must evaluate the circumstances and determine what form of relationship is appropriate.

The later Nigerian jurisprudence continues to treat welfare as paramount. Cases such as *Okide v Okide* and *Mgbodi v Ugiagbe* reaffirm the centrality of the child's interests in custody and related proceedings^[11]. The doctrinal continuity is notable: Nigeria's central difficulty is not that its courts lack a welfare principle. It is that the principle may not always be translated into rapid, child-sensitive and enforceable procedures.

The Supreme Court's approach in *Williams* also provides a useful foundation for equality. The welfare analysis does not begin with a presumption that the father has superior rights to custody or that the mother is inherently more suitable. The relevant question is the child's welfare in the circumstances. Such an approach is consistent with contemporary children's-rights norms and the principle of non-discrimination.

The judicial emphasis on welfare should therefore be extended to case management. If the court's ultimate responsibility is to protect welfare, the management of the proceedings should be understood as part of that responsibility. This does not mean that judges should predetermine cases. It means that avoidable delay, particularly where interim contact or protection is required, should be treated as a matter capable of affecting the welfare assessment.

Judicial Delay as a Substantive Family-Justice Problem

Judicial delay is a familiar problem in legal systems and has multiple causes, including inadequate judicial strength, congested dockets, interlocutory applications, procedural complexity, insufficient infrastructure, adjournments and difficulties with evidence. It is important, however, to distinguish systemic causes from individual responsibility. A rigorous article should not attribute delay to judges or litigants without evidence. The present analysis is concerned with institutional consequences rather than assigning blame. The constitutional requirement of fair hearing within a reasonable time provides a starting point. Yet reasonable time must be context-sensitive. In family cases involving children, the relevant period should be assessed against the child's age and the nature of the relief sought. An application concerning a child's immediate safety is inherently urgent. A dispute over long-term arrangements

may require more evidence, but it may still require interim arrangements to protect relationships and stability while the case is determined.

Delay may also interact with economic inequality. Wealthier parties may be able to sustain litigation for longer periods, obtain expert evidence and pursue interlocutory applications. Poorer parties may experience legal costs as a pressure to compromise legitimate claims. Children, who ordinarily have no control over their parents' resources, may experience the consequences of both choices. Legal aid is therefore not merely an access-to-law measure; in child-related proceedings it can be a child-welfare measure.

The same is true of enforcement. A parent may obtain a contact order only to encounter practical resistance or uncertainty concerning enforcement. If enforcement is delayed, the child may continue to experience the consequences of non-compliance. Conversely, coercive enforcement can be harmful if it ignores safeguarding concerns. The appropriate model is therefore proportionate, welfare-sensitive enforcement rather than automatic punishment or automatic tolerance of non-compliance.

Judicial delay should also be considered at the judgment stage. The conclusion of evidence does not necessarily end the welfare consequences of delay. Where judgment is reserved for an extended period, the child may continue living under an interim arrangement and the factual circumstances may evolve. In particularly time-sensitive cases, the court's responsibility for case management should extend through to the timely delivery of judgment.

Any international analysis of Nigerian family justice must account for legal pluralism. Family relationships in Nigeria are regulated through statutory law, customary law, religious norms and social practices. This plurality can enrich legal responses to family disputes, but it can also complicate access to justice where the applicable norm is uncertain or where customary practices conflict with constitutional equality and child-rights standards.

Customary-law disputes may be particularly significant in matters concerning marriage, succession, guardianship, legitimacy, residence and property. The constitutional commitment to equality and dignity provides an important boundary for customary rules. The courts have progressively scrutinised customary practices that discriminate against women or undermine fundamental rights. The development is relevant to family justice because economic and social inequality within the family can affect a person's capacity to litigate effectively and can influence the welfare of children.

The access-to-justice implications are practical as well as doctrinal. A litigant may have to navigate more than one normative system before understanding which court has jurisdiction, what evidence is required and what remedy is available. Legal practitioners therefore have an important role in explaining the interaction between customary and statutory rules. Courts should also avoid allowing procedural uncertainty concerning the source of applicable law to create unnecessary delay in disputes involving children.

The comparative UK analysis is useful here because England and Wales operate within a more unified statutory family-law framework, although religious and cultural diversity still creates complex questions of family identity and practice. Nigeria's pluralism requires a more explicit sensitivity to customary context. The solution is not to

suppress customary law but to ensure that its application remains consistent with constitutional rights, children's rights and the paramount welfare principle where children are concerned.

The welfare-delay paradox may be particularly acute where uncertainty concerning applicable customary norms prolongs litigation. A child should not bear the cost of an unresolved legal classification. Courts should identify the governing legal framework at an early stage and determine whether the dispute can be resolved through statutory welfare principles even where background customary questions remain contested.

The economic dimension of family justice requires greater attention. Family proceedings can involve repeated court appearances, legal representation, welfare assessments, expert evidence, transportation and enforcement applications. The financial burden may be particularly severe where the parties have unequal resources. A formally neutral procedure may therefore produce substantively unequal access.

Legal aid is often discussed as an individual benefit, but in child-related proceedings its significance is broader. Where a parent cannot effectively present a case concerning custody or access, the resulting evidential imbalance may affect the court's ability to determine the child's welfare. Legal assistance can also help parties understand the limits of their rights and obligations, reducing unnecessary applications and potentially facilitating settlement where appropriate.

The Legal Aid Act 2011 provides a statutory basis for legal aid in Nigeria, but the availability and practical reach of assistance remain matters of institutional capacity. A serious family justice reform programme should therefore examine eligibility criteria, funding, geographical coverage, the availability of family-law specialists and the relationship between legal aid and pro bono services. The objective should not merely be to increase the number of assisted litigants, but to ensure that assistance is available at the stages when it can prevent welfare harm.

Economic inequality also interacts with delay. A party with greater resources may be better able to sustain prolonged proceedings, while a financially vulnerable party may be pressured into accepting arrangements that are not genuinely suitable. The child may therefore experience the indirect consequences of economic disparity between parents. Access to justice should consequently be understood as requiring reasonable equality of arms, especially where decisions about children are involved.

The European and UK experience demonstrates that even systems with more developed legal-aid institutions face difficult questions concerning funding and eligibility. The comparative lesson for Nigeria is not that legal aid alone solves access problems. Rather, legal aid should be integrated with simplified procedure, early case management, mediation where appropriate and effective judicial oversight.

Parental Access, Family Relationships and Effective Remedies

Parental access should be understood as a welfare-sensitive mechanism for maintaining family relationships, not as a proprietary entitlement. A child is not the property of either parent. The purpose of contact is therefore not to reward an adult but to facilitate a relationship that is consistent with

the child's welfare, identity and development, subject always to safety considerations.

This approach avoids two opposing errors. The first is to treat biological parenthood as an automatic entitlement to unrestricted contact. That may be inappropriate where there is abuse, violence, coercive control, serious neglect or other safeguarding concerns. The second is to assume that the residential parent has unilateral authority to determine whether the child maintains a relationship with the other parent. That approach can also undermine the child's interests where meaningful contact would be safe and beneficial.

A welfare-sensitive system should distinguish among direct contact, supervised contact, indirect contact, electronic communication, holiday arrangements and, where necessary, suspension of contact. Interim arrangements can be particularly important. They allow the court to preserve an appropriate relationship while more complex evidence is gathered. The court should nevertheless review interim arrangements regularly so that they do not become a de facto final determination simply because litigation is prolonged.

The concept of substantive justice is especially useful here. Formal justice may mean that a parent has a legal avenue through which to seek contact. Substantive justice asks whether the process provides a realistic possibility of preserving or restoring an appropriate relationship. If a suitable contact order is eventually made after a prolonged period during which contact was absent, the legal system may have provided a formal remedy but not a complete substantive remedy for the lost period.

The argument is not that every alleged denial of access is wrongful. The article deliberately avoids making that determination in the anonymised proceeding discussed below. The point is structural: where a court ultimately determines that contact is appropriate, the system should ask whether interim mechanisms could have prevented the relationship from deteriorating while the case was pending.

The Anonymised Pending Proceeding: An Illustrative Application

The article refers to an anonymised pending family proceeding in which a biological father alleges that he has been denied access to his daughter. The proceeding has remained pending for more than one year. It is further alleged that the child's surname was changed during the pendency of the proceedings and that judgment remained outstanding for more than six months after the conclusion of the hearing. These matters are presented only as allegations and are not independently adjudicated in this article.

The proceeding is not offered as precedent. Nor does the article determine whether any party acted improperly, whether the alleged surname change was lawful, whether contact should have been ordered, or whether the delay was attributable to the court or any participant. The purpose of including the matter is to demonstrate how a family dispute can evolve while judicial determination is pending.

The case illustrates the temporal problem. At commencement, the dispute may have concerned whether and how a father should have access to a young child. After a year or more, the court may be confronting a different relational reality. If contact has been interrupted, the child may have developed routines and attachments in the absence of the parent. The parent may also have

experienced a prolonged period without meaningful participation. Whatever the eventual legal outcome, the factual context has changed.

The alleged change of surname illustrates a different dimension. A child's name may have legal, social, cultural and identity significance. Where such a change occurs during litigation, the court may be required to consider how the change affects the child's welfare and whether the litigation itself has generated new issues. The article does not assume that a change of surname is inherently harmful or unlawful. Its relevance is that prolonged litigation can create new factual circumstances that were not present when the dispute began.

The alleged period of more than six months between the conclusion of hearing and judgment illustrates the judgment-stage dimension of the paradox. Once evidence has closed, the parties and the child remain subject to uncertainty. If the case concerns access, the absence or continuation of contact during that period may affect the eventual remedy. If the case concerns custody, the child's living arrangement may become increasingly entrenched.

The appropriate response is not to prejudice the pending case but to ask what institutional mechanisms should exist in all similar cases. Should the court have considered interim contact? Should the case have received priority because a child was involved? Should a welfare report have been obtained early? Should the judgment have been prioritised because the subject matter was time-sensitive? These questions are matters of family justice policy rather than determinations of the pending dispute.

The proceeding therefore serves the analytical function of a case study. It demonstrates why the welfare-delay paradox is capable of practical significance: the legal dispute does not occur outside time. The family continues to live while the court deliberates. A justice system that focuses exclusively on the eventual judgment may overlook the welfare consequences of the period preceding it.

The United Kingdom: Welfare, Delay and Family Procedure

The law of England and Wales provides a useful comparative framework because the Children Act 1989 places welfare at the centre of decision-making and expressly recognises the prejudicial effect of delay. Section 1^[1] provides that when a court determines a question concerning a child's upbringing, the child's welfare is the court's paramount consideration. Section 1^[2] provides that the court shall have regard to the general principle that delay in determining the question is likely to prejudice the child's welfare^[12].

Section 1^[3], the welfare checklist, requires attention to factors including the child's ascertainable wishes and feelings, physical, emotional and educational needs, the likely effect of changes in circumstances, age, sex, background and other relevant characteristics, and any harm the child has suffered or is at risk of suffering^[13]. The checklist demonstrates that welfare is not a purely abstract concept. It requires structured consideration of the child's actual circumstances.

The UK framework also recognises parental involvement while avoiding an automatic equal-time rule. The Children and Families Act 2014 amended the Children Act to provide that courts should presume, unless the contrary is shown, that involvement of a parent in the life of a child will further

the child's welfare, while making clear that this does not create a presumption of equal division of time^[14]. The statutory approach therefore supports meaningful parental involvement where consistent with welfare and safety rather than parental entitlement for its own sake.

The Family Procedure Rules 2010 provide a procedural framework for family proceedings and emphasise dealing with cases justly, including ensuring that cases are dealt with expeditiously and fairly and that the welfare of children is properly protected^[15]. The UK's institutional architecture includes specialist Family Courts, judicial case management and a range of welfare and safeguarding mechanisms. These do not eliminate delay, but they demonstrate how procedural structures can make timeliness part of family justice rather than leaving it entirely to general civil procedure.

The Human Rights Act 1998 incorporates Convention rights into domestic law. Article 6 ECHR protects fair hearing rights within a reasonable time, while Article 8 protects private and family life. In family disputes, the rights of parents and children may overlap or conflict, requiring proportionality and careful attention to the child's welfare and safety. The Strasbourg jurisprudence on family life also reinforces the importance of practical and effective measures rather than merely formal recognition of relationships.

The UK framework should not be romanticised. It has experienced substantial pressures, including court backlogs, legal-aid constraints and delays in care and private-law proceedings. The comparative value therefore lies not in presenting the UK as a perfect model but in identifying legal and institutional devices that explicitly connect procedure with welfare.

Ans & Anor V Ml and the Temporality of Childhood

The Supreme Court's decision in *ANS & Anor v ML* is particularly valuable to the present argument. The case arose from adoption proceedings in Scotland. The proceedings had continued during a significant period of the child's early childhood, and the Supreme Court confronted the consequences of delay for the child and the adults seeking to fulfil parental roles^[16].

Lord Wilson's discussion is important because it treats childhood as a finite period that cannot be recovered. The Court recognised that a child has only one childhood and that the passage of time can produce anguish and potentially irreversible consequences^[17]. The decision was concerned with adoption, and it should not be converted into direct authority for parental-access disputes. Its relevance is conceptual: it provides authoritative judicial recognition that time in childhood has a quality that ordinary litigation does not possess.

The case strengthens the welfare-delay paradox in three ways. First, it recognises that delay can affect the substance of the dispute rather than merely postpone its resolution. Secondly, it recognises that relationships may develop during the period of litigation. Thirdly, it illustrates the possibility that an eventual legal decision may be unable fully to restore what has been lost through time.

This reasoning is consistent with section 1^[2] Children Act 1989. Taken together, the statute and the Supreme Court authority demonstrate a legal culture in which timeliness is capable of being treated as an element of welfare. The comparative lesson for Nigeria is not that Nigerian courts must mechanically adopt English law, but that the Nigerian

welfare principle can be understood in a similarly temporally sensitive manner.

The authority is particularly relevant to the article's proposed distinction between procedural and substantive delay. Procedural delay concerns the time taken by the institution. Substantive delay concerns the consequences that time produces in the child's life. The welfare-delay paradox is concerned with the point at which the first becomes the second.

Nigeria–UK Comparative Analysis

The comparison reveals substantial normative convergence. Both systems place child welfare at the centre of custody and upbringing decisions. Both recognise the importance of parental relationships while subjecting parental involvement to welfare and safety. Both provide mechanisms through which courts can regulate custody, contact and other aspects of family life. Both operate within international children's-rights norms that increasingly recognise children as rights-holders.

The principal difference relevant to this article is the explicit statutory treatment of delay. The UK Children Act states that delay is likely to prejudice welfare. Nigerian law strongly protects welfare but does not formulate the temporal principle in equivalent general terms within section 71 of the Matrimonial Causes Act. This difference creates an opportunity for Nigerian doctrinal development without requiring wholesale legislative transplantation.

A second difference concerns procedural institutionalisation. England and Wales have developed specialised family justice structures, formal case-management expectations and a detailed procedural framework. Nigeria has Family Court structures under the Child Rights Act and state-level child-rights regimes, but implementation varies. The comparative question should therefore focus on institutional consistency, training, resources and enforcement rather than merely the existence of legislation.

A third difference concerns the articulation of parental involvement. The UK statutory framework expressly addresses parental involvement while rejecting an assumption of equal time. Nigerian law addresses access through welfare-oriented custody provisions. The two approaches are compatible in principle. Nigerian courts can treat appropriate parental involvement as a factor in welfare without converting access into an absolute parental entitlement.

A fourth difference concerns child participation. International law provides a common normative foundation through Article 12 CRC, but the institutional mechanisms for obtaining and evaluating children's views differ. Nigeria's family justice system would benefit from clearer and more consistent mechanisms for child-sensitive participation, particularly in proceedings where a child's views may materially inform welfare assessment.

The comparison should not become a one-way transplant exercise. Nigeria has distinct constitutional arrangements, socio-economic conditions, customary-law contexts, court structures and patterns of family life. A reform that works in England and Wales may require adaptation in Nigeria. For example, alternative dispute resolution may be valuable where it reduces conflict and cost, but it should not displace judicial safeguards in cases involving domestic violence or serious power imbalance. Similarly, electronic case

management can reduce administrative delay but cannot substitute for adequate judicial capacity.

The appropriate comparative methodology is therefore functional rather than imitative. The question is what legal principle or institutional mechanism addresses a common problem, what assumptions support it, and how it might be adapted to Nigerian conditions.

Methodological Limitations and Comparative Caution

The comparative methodology adopted in this article has limitations that should be made explicit. First, Nigeria and the United Kingdom differ in constitutional structure, population, court resources, legal culture and socio-economic conditions. A rule that operates effectively in England and Wales cannot automatically be transplanted into Nigeria. Secondly, family law is particularly sensitive to cultural context. Concepts such as parental involvement, extended-family participation and child autonomy may be understood differently across jurisdictions.

Thirdly, the article is doctrinal and normative rather than an empirical study of court performance. It does not claim to establish statistically that delay causes particular welfare outcomes in Nigeria. The welfare-delay paradox is proposed as a conceptual framework that should be tested through future empirical research. This distinction is important because international peer review should distinguish a theoretically plausible proposition from an empirically demonstrated causal relationship.

Fourthly, the anonymised pending proceeding is illustrative rather than evidential proof of systemic behaviour. It demonstrates why the issue deserves examination but cannot support generalisations about the frequency or causes of delay. The article deliberately avoids attributing responsibility for the particular delay and avoids presenting allegations as established facts.

Finally, the article recognises that the concept of welfare is itself contested. Best interests cannot be reduced to a single measurable outcome. Different children may require different arrangements, and a relationship that is beneficial in one case may be harmful in another. The welfare-delay paradox therefore requires contextual judgment rather than a rigid rule that every child-related case must be resolved within an identical period.

These limitations strengthen rather than weaken the argument. The article does not claim that speed is the highest value in family justice. It claims that time should be treated as one of the legally relevant conditions within which welfare is assessed. The appropriate objective is therefore not maximum speed but proportionate, welfare-sensitive expedition.

Therapeutic Jurisprudence and the Design of Family Justice

A family justice system informed by Therapeutic Jurisprudence would not abandon adjudication. Instead, it would recognise that the way a case is processed can influence the eventual welfare outcome. Judicial language, hearing arrangements, the management of conflict, the timing of decisions and the clarity of orders can all affect whether parties understand and comply with the outcome.

Specialised judges can play a significant role because repeated exposure to family disputes can develop expertise in identifying recurring patterns. However, specialisation should be supported by multidisciplinary resources,

including welfare officers, social workers, psychologists and appropriately trained child advocates where necessary. The purpose is not to transfer judicial decision-making to professionals but to improve the quality of information available to the court.

Mediation can also have therapeutic value. Where parents are capable of negotiating safely, mediation may reduce the adversarial intensity of proceedings and encourage communication. It may also produce arrangements tailored to the family's circumstances rather than a rigid order. Yet mediation must remain voluntary or appropriately screened and must not be used to force vulnerable parties into bargaining where coercion or violence is present.

Judicial communication is another dimension. Clear explanations of why an order has been made can improve compliance. Parents may be more willing to follow arrangements when they understand that the order is directed to the child's welfare rather than designed to punish either parent. This is consistent with the Nigerian Supreme Court's long-standing rejection of custody as a form of parental punishment.

Therapeutic Jurisprudence also supports early identification of issues. If the principal dispute is contact rather than residence, the court should identify whether interim contact can safely be established while the substantive issues are determined. If the principal issue is safeguarding, the court should prioritise evidence and protective arrangements. Such differentiation is an antidote to procedural delay because it directs judicial resources to the issues most likely to affect welfare.

Accountability, Data and Judicial Case Management

Institutional accountability is essential if the temporal dimension of welfare is to become more than a theoretical aspiration. Courts and judicial administration should be capable of identifying child-related cases that have exceeded appropriate timeframes. Such monitoring need not undermine judicial independence. Administrative data can be used to identify patterns without dictating the outcome of individual cases.

A national family justice dataset could record the date of filing, first case-management hearing, interim applications, welfare assessments, substantive hearing, judgment and enforcement. It could also distinguish cases involving allegations of violence or safeguarding concerns from ordinary private-law disputes. Such data would allow policymakers to identify where delay occurs and whether reforms are effective.

Performance indicators should nevertheless be designed carefully. A target that rewards speed without measuring quality could encourage premature decisions. The appropriate indicators should therefore combine timeliness with welfare safeguards, procedural fairness, compliance and the quality of reasons. A family court should not be rewarded for disposing of cases rapidly if the disposal results in unsafe or unenforceable orders.

Technology can assist but cannot substitute for institutional capacity. Electronic filing, remote hearings, digital case tracking and automated alerts can reduce administrative delay and improve visibility of outstanding judgments. However, technology should be implemented in a manner that does not exclude litigants without reliable internet access or digital literacy. Access to justice must remain inclusive.

The UK experience of family justice reform demonstrates that procedural innovation is an ongoing process rather than a completed project. Nigeria can learn from these developments while adapting them to local conditions. The key is to build a system in which information about delay is available to decision-makers and in which child-related urgency can be identified early.

Reframing the Judicial Role

The welfare-delay paradox also has implications for the judicial role. A judge in family proceedings is not merely a passive arbiter waiting for parties to present a fully developed dispute. The welfare-centred statutory framework permits and sometimes requires active case management. This includes identifying the issues, directing appropriate evidence, considering interim protection and preventing procedural steps that add little value.

Active case management does not mean judicial bias. On the contrary, it can enhance fairness by ensuring that the real welfare issues are identified and that neither party gains an advantage through procedural obstruction. The judicial task is to manage the process while preserving impartiality, hearing both sides and giving reasons for decisions.

In child-related cases, the court should also consider the consequences of its own procedural orders. An adjournment may be justified because evidence is incomplete, but the court should ask whether interim arrangements are required during the adjournment. A direction for a welfare report may be appropriate, but the court should consider how long the report is likely to take and whether other evidence can be progressed in the meantime. These are practical expressions of the welfare-delay paradox.

The same reasoning applies to judgment writing. Once a case has been heard, the court should remain conscious that the child continues to live under the consequences of the unresolved dispute. Where the case is particularly time-sensitive, judicial administration should facilitate prompt determination without compromising the quality of reasons. This conception of the judicial role aligns Access to Justice Theory with Therapeutic Jurisprudence. Effective case management improves institutional accessibility, while reducing avoidable uncertainty can reduce anti-therapeutic effects. Neither theory replaces legal doctrine; each helps explain why procedural choices matter.

From Formality to Substantive Family Justice

The cumulative effect of the analysis is a shift from a formal to a substantive conception of family justice. Formality remains essential: courts must be properly constituted, parties must be heard, evidence must be tested where necessary, and decisions must be based on law. But procedural legality is not the whole of justice where the subject is a child. The effectiveness of the legal order must also be assessed by asking whether the child has been protected during the process, whether legitimate family relationships have been preserved where appropriate, and whether the eventual remedy remains capable of achieving its purpose.

This approach also places responsibility on all participants. Judges have responsibilities of case management; lawyers have responsibilities to avoid unnecessary procedural obstruction and to advise clients realistically; litigants have responsibilities to comply with orders and protect children from adult conflict; and court administrators have

responsibilities to ensure that files, judgments and enforcement processes move efficiently. Family justice is therefore an institutional ecosystem rather than an event occurring only when a judge pronounces judgment.

The welfare-delay paradox ultimately provides a practical test for that ecosystem. At every significant procedural stage, the system should be capable of asking what the child needs now, what may happen if the matter is postponed, whether interim protection is adequate, and whether the eventual remedy will remain meaningful. Those questions do not predetermine the outcome. They ensure that the passage of time is recognised as part of the legal reality in which the child's welfare must be protected.

Reforming Nigerian Family Justice

The first reform priority is the expansion and strengthening of specialised Family Courts. Specialisation should include not only jurisdiction but trained judges, dedicated registries, case-management protocols, child-sensitive facilities and access to welfare professionals. The objective should be a coherent family justice institution rather than the relocation of existing general civil procedures into a court with a different name.

Secondly, child-related proceedings should receive expedited case management. The court should identify at the earliest stage the child's age, the nature of the relief, safeguarding concerns, disputed facts, evidence required and interim arrangements. A short case-management hearing can prevent months of delay caused by procedural uncertainty.

Thirdly, interim relief should be strengthened. Where contact is safe and consistent with welfare, the court should consider interim arrangements capable of preserving the parent-child relationship. Where contact is disputed on safeguarding grounds, supervised or indirect contact may be considered while evidence is gathered. Interim orders should be reviewed rather than allowed to become permanent by default.

Fourthly, courts should adopt a welfare-sensitive approach to adjournments. Each adjournment should be assessed not only for procedural necessity but also for its likely impact on the child. The question should be: what will happen to this child if the case is postponed for another month, three months or six months? That question operationalises the welfare-delay paradox.

Fifthly, the period between final hearing and judgment requires institutional attention. Child-related judgments should be prioritised where the passage of time is likely to alter welfare circumstances. Judicial independence and deliberative quality must remain protected, but internal case-management systems can identify cases in which delay creates particular welfare risks.

Sixthly, legal aid and pro bono structures should be strengthened. Family litigation can be financially exhausting, particularly where multiple applications and appeals are involved. A parent who cannot obtain representation may be unable to seek interim relief or challenge inappropriate arrangements. The child's interests may consequently be affected by the economic capacity of adults.

Seventhly, child participation should be developed through clear procedures. Children should not be required to choose between parents, but they should have safe opportunities to express views where appropriate. Judges should have access

to trained professionals capable of facilitating participation without exposing children to unnecessary conflict.

Eighthly, enforcement mechanisms should be improved. Orders concerning contact and maintenance require practical implementation. Enforcement should remain proportionate and welfare-sensitive. Where non-compliance is deliberate and harmful, the system should have meaningful responses; where compliance is impossible because of changed circumstances or safeguarding concerns, the court should be able to review the order promptly.

Ninthly, data should be collected. Family justice reform is weakened by the absence of reliable empirical information concerning the duration of custody cases, adjournment frequency, judgment-delivery intervals, interim contact orders and enforcement outcomes. A national family justice data system would allow policymakers to test whether reforms reduce delay and improve outcomes.

Finally, Nigeria should consider an express statutory or procedural statement recognising the temporal dimension of child welfare. The UK model offers one example. A Nigerian formulation could provide that, in proceedings concerning the upbringing, custody, access or protection of a child, the court shall have regard to the principle that unnecessary delay may prejudice the welfare of the child. Such a provision would not require rigid deadlines in every case; it would require welfare-sensitive case management.

The Welfare-Delay Paradox as a Framework for Future Research

The welfare-delay paradox should be tested empirically. Do longer custody proceedings correlate with reduced parental contact? Does the duration of proceedings affect the child's expressed wishes? Are interim access orders more likely to preserve relationships? Does specialised judicial case management reduce the time between filing and final determination? These questions can be examined through court data, case-file studies and interviews with judges, lawyers, social workers, parents and appropriately protected child participants.

The concept may also be applied beyond custody. Adoption proceedings, care proceedings, child-protection applications, domestic violence cases involving children, maintenance claims and international child-abduction matters all involve time-sensitive interests. In each context, the relevant question is whether the passage of time can itself alter the welfare circumstances that the legal system is attempting to protect.

The concept also has implications for comparative family law. Different jurisdictions may express the relationship between delay and welfare in different ways. Some may use statutory deadlines; others may rely on judicial case management; others may develop specialised courts or administrative procedures. Comparative research can identify which mechanisms best protect children without sacrificing procedural fairness.

The paradox may ultimately provide a bridge between access-to-justice scholarship and children's-rights scholarship. Access-to-justice research traditionally focuses on institutional barriers, while children's-rights scholarship focuses on substantive and procedural rights. The welfare-delay paradox connects the two by demonstrating that institutional performance can directly affect the enjoyment of substantive child rights.

The concept also reinforces Therapeutic Jurisprudence. If the legal process is itself capable of producing anti-therapeutic effects, then delay is one of the clearest institutional variables requiring attention. A family court cannot control every aspect of family conflict, but it can control its own procedures, priorities and case-management decisions. The court therefore has a legitimate institutional role in reducing avoidable process-related harm.

Child Maintenance, Education and the Nigerian Welfare-Delay Paradox

The case also exposes the practical asymmetry between children and litigation. Adults can initiate proceedings and make strategic decisions about timing. Children experience the consequences without controlling the litigation. A delay in deciding a maintenance application may therefore transfer the cost of institutional inactivity onto persons least able to control it. The welfare-delay paradox captures that distributive effect.

This illustrates why maintenance litigation involving children cannot always be treated as ordinary retrospective debt litigation. The child's welfare is dynamic. A court may need to distinguish between accrued educational expenses, current expenses and anticipated future expenses. It may also need to consider whether an interim order could have prevented the accumulation of arrears or preserved educational continuity while the substantive claim was pending.

The educational progression in the present anonymised case study gives the problem a further temporal dimension. When proceedings began, the four children had particular educational needs. Years later, one had graduated, another had reached the fifth year of Medicine, another had completed Nursing, and the youngest had reached the fourth year of university. The court, when eventually deciding the dispute, may therefore have to determine not only what the father should have contributed at the beginning but also how the children's changed circumstances affect current and future relief.

These authorities support an important distinction. The existence of a parental maintenance obligation and the amount or form of the obligation are separate questions. A pensioner, unemployed parent or parent with other dependants may present genuine evidence of limited means. That evidence must be considered. But it does not necessarily answer the antecedent question whether responsibility exists. A welfare-sensitive court must balance the child's needs against the parent's actual and reasonably available resources.

Kpilah v Ngwu is also instructive because the proceedings concerned six children and sought financial provision for maintenance, education, medical needs, clothing and accommodation ^[79]. The case illustrates that a parent's ability to contribute is relevant to the quantum of maintenance, but the fact of financial difficulty does not make the children's needs legally irrelevant. The judicial task is one of assessment: what contribution is reasonable in light of the children's needs and the parent's resources?

The same principle appears in Akinremi Oritsewetin Nanna v Ekpehose Maryanne Nanna, where the court considered maintenance for two children alongside an order requiring the father to pay school fees, books and other expenses identified by the school ^[78]. The case is particularly relevant to proportionality because the Court of Appeal considered

the father's monthly income and adjusted the maintenance award while preserving the educational obligation.

Negbenebor v Negenebor provides a further illustration. The application sought maintenance for three infant children, expressly including school fees, clothing and other necessities ^[77]. The case demonstrates that the financial needs of children are not confined to subsistence. Education has long been capable of falling within the maintenance analysis under Nigerian family law.

Nigerian maintenance jurisprudence provides a firm foundation for recognising educational expenditure as part of a parent's financial responsibility. In Falobi v Falobi, the Supreme Court considered maintenance for four children and upheld a structure under which the father was required to pay regular maintenance and, separately, the children's school fees from his own income ^[76]. The importance of the case is not only that school fees were recoverable; it is that educational expenditure was treated as a component of the child's continuing welfare.

Parental Financial Capacity, Retirement and the Continuing Duty to Support Children

A Nigerian court confronted with a pension-based defence should therefore distinguish between inability and unwillingness. Genuine inability may justify a lower quantum, phased payment or a different form of order. But a general assertion of retirement should not end the inquiry. Evidence concerning pension income, property, savings, investments, other dependants and reasonable expenditure may be relevant to a proportionate determination.

The international children's-rights framework also reinforces the principle that economic hardship does not erase a child's rights. Article 27 of the Convention on the Rights of the Child recognises the child's right to a standard of living adequate for development and places primary responsibility on parents, within their abilities and financial capacities, for securing living conditions necessary for development ^[82]. The Article also recognises the state's role in assisting parents where necessary. The result is a model of shared responsibility rather than an assumption that either the state or one parent alone bears the entire burden.

The Irish framework is valuable because it avoids an artificial opposition between parental means and children's rights. The question is not whether the parent is working full-time. It is whether, considering all relevant resources and responsibilities, the parent has failed to provide such maintenance as is proper in the circumstances. This approach offers a useful comparative lens for analysing pension-based arguments in Nigeria.

Ireland provides a particularly useful comparative example. Section 5 of the Family Law (Maintenance of Spouses and Children) Act 1976 directs the court to consider the income, earning capacity, property and other financial resources of the spouses and dependent children and their financial responsibilities towards one another ^[80]. The Irish statutory definition of a dependent child also expressly extends in specified circumstances to a child receiving full-time education ^[81]. The legislation therefore combines continuing parental responsibility with a structured financial-capacity assessment.

Nigerian maintenance law, read through its statutory and judicial framework, requires attention to circumstances rather than a mechanical formula. The court should examine the child's actual needs, the parent's means, the parent's

other responsibilities and the proportionality of the requested relief. Where a pension is the principal source of income, the pension should form part of the factual assessment of available resources rather than operating as an automatic defence to the child's claim.

The assertion that a parent is a pensioner raises an important issue that should be approached with both realism and legal precision. Retirement may materially reduce income and may affect earning capacity. It may also create new financial commitments, health expenses and dependency obligations. The appropriate legal question is therefore not whether retirement automatically eliminates responsibility but how the parent's available resources should be assessed in relation to the child's needs.

England and Wales: Educational Support, Changing Needs and Enforcement

England and Wales also provide a direct statutory foundation for the temporal argument. Section 1^[2] of the Children Act 1989 requires the court to have regard to the principle that delay in determining a question concerning a child's upbringing is likely to prejudice the child's welfare^[88]. In maintenance and educational disputes, the same underlying logic applies: the longer a case remains unresolved, the greater the possibility that the child's educational position will change while the remedy remains pending.

These authorities show a system in which the educational obligation can be separated from general maintenance, expressed in precise terms and enforced when unpaid. They also illustrate that variation is possible where circumstances genuinely change. The comparative lesson is not that Nigerian courts should copy each procedural device, but that educational orders should be sufficiently clear, reviewable and enforceable to prevent delay from converting an obligation into an accumulation of uncertainty.

More strikingly for the present analysis, *TY v XA* (No 3) involved a continuing order for child maintenance and education to tertiary level. The court dealt with an asserted change in the father's financial circumstances but maintained the educational obligation pending a formal variation^[86]. In *TY v XA* (No 4), the court subsequently dealt with enforcement of outstanding school fees and considered the father's competing financial priorities and claimed inability to pay^[87].

In *A Mother v A Father*, the court made provision for school fees and associated educational expenses, including meals, examination fees, textbooks, school transport and extracurricular activities^[85]. The case is relevant because it demonstrates how an educational obligation may be defined with sufficient specificity to reduce later disputes about what a parent is required to pay.

Re C (A Child) (Financial Provision: Non-disclosure) provides another useful example. The court considered future school fees, projected fee increases and the financial circumstances of the parents, and made provision designed to meet educational needs over a period of years^[84]. The judgment illustrates the continuing nature of educational expenditure and the need to structure orders in a manner capable of responding to foreseeable change.

The law of England and Wales provides a particularly developed comparative setting for maintenance and educational support. In *AZ v FM*, the Family Court dealt with a child whose financial provision extended into tertiary

education. The order provided for maintenance during university and equal sharing of university fees. The subsequent variation proceedings considered the child's age, changing circumstances and the difficulty of capitalising an obligation where educational circumstances might alter^[83]. The case is valuable to the welfare-delay paradox because it demonstrates judicial awareness that future educational needs are not fixed at the moment an order is made.

Scotland: Parental Responsibilities, Education and Temporal Welfare

Scotland also offers a useful lesson in procedural thinking. The Children (Scotland) Act 2020 reforms expressly address delay in court cases, child participation, regulation of child welfare reporters and enforcement of orders^[92]. The significance is not that Scotland has eliminated delay, but that delay has been treated as an issue capable of legislative and institutional design.

The Scottish comparison suggests that a modern family-law system can conceptualise parental obligations broadly enough to encompass welfare, upbringing and contact while maintaining separate mechanisms for financial provision. For Nigeria, this supports a more integrated conception of family justice in which educational support is treated as part of the continuing practical content of responsible parenthood.

The Scottish framework is particularly useful for this article because it places health, development and welfare within the concept of parental responsibility while other legislation addresses maintenance. The Judiciary of Scotland's guidance notes that the statutory parental responsibilities do not displace other duties, including the duty of aliment under the Family Law (Scotland) Act 1985^[91]. This illustrates the importance of reading parental responsibility and financial maintenance as complementary rather than competing legal concepts.

Scottish law also recognises the relevance of a child's participation. Section 6 of the 1995 Act requires a person exercising parental responsibilities or rights in major decisions to have regard, so far as practicable, to the child's views, taking account of age and maturity^[90]. This supports a child-centred approach in which educational decisions are understood as part of the child's development rather than as matters exclusively controlled by parents.

Scotland offers a genuinely distinct comparative jurisdiction. The Children (Scotland) Act 1995 defines parental responsibilities in terms that include safeguarding and promoting the child's health, development and welfare and, where the child is not living with the parent, maintaining personal relations and direct contact^[89]. The legislation therefore describes parenthood through responsibilities owed to the child rather than merely rights asserted by adults.

Ireland: Dependent Children, Higher Education and Parental Resources

The Irish framework also helps clarify the remedial significance of timing. If the law recognises a dependent university student, the court is not merely addressing a historical childhood expense. It is responding to an ongoing developmental and educational need. A delayed determination can therefore have immediate consequences for the student's ability to remain enrolled, pay fees or complete the course.

The Irish statutory framework is therefore useful on two fronts. First, it recognises continuing dependency where education continues. Secondly, it makes parental resources central to assessing the quantum of responsibility rather than allowing employment status alone to determine the result. This provides a useful comparative response to the argument that retirement should automatically terminate or radically reduce educational responsibility.

The Irish courts also apply a structured approach to financial capacity. In *R v C* (Appeal of Consent Order), the High Court considered maintenance under section 5A of the 1976 Act and emphasised that the court has a discretion to determine what maintenance is proper while taking account of the statutory factors concerning financial resources and responsibilities^[94].

This approach has direct conceptual relevance to a Nigerian case in which children progress through university while proceedings remain pending. Irish law recognises that the financial dependency associated with education can extend beyond the conventional age of majority. The comparison does not establish that Nigerian law should adopt the same age threshold, but it demonstrates one legislative method of acknowledging the temporal reality of higher education.

Ireland is especially valuable for the present research because its maintenance legislation expressly accommodates the circumstances of children who continue into full-time education after reaching the ordinary age of childhood. Under the Family Law (Maintenance of Spouses and Children) Act 1976, a dependent child may, subject to statutory limits, include a person under twenty-one who is or will be receiving full-time education at a university, college, school or other educational establishment^[93].

Four-Jurisdiction Comparative Synthesis

The comparison finally reinforces the article's central thesis. Delay is not merely about the number of days between filing and judgment. Its legal significance depends on what happens during those days. If a child progresses through an educational programme, accumulates arrears, loses access to an institution or reaches graduation before judgment, the passage of time has changed the substantive context. The welfare-delay paradox is therefore a bridge between procedure and substance.

A four-jurisdiction comparison also cautions against a simplistic "parent pays school fees" model. The amount and form of support should reflect proportionality, parental means, the child's needs, safety and the applicable legal framework. A court may need to make different orders for tuition, accommodation, books, transport, medical insurance or other educational costs. The essential requirement is that the order is sufficiently clear to be implemented and, where necessary, enforced.

Nigeria's existing law already contains the conceptual foundations for this synthesis. The task is to connect them. Section 71 of the Matrimonial Causes Act places children's interests at the centre of relevant proceedings; the Child Rights Act recognises best interests and access; the Constitution guarantees fair hearing within a reasonable time; and Nigerian case law demonstrates that school fees and educational expenses may form part of maintenance^[95]. The missing link is a more explicit temporal and institutional framework for ensuring that those rights are protected while proceedings remain pending.

The comparative lesson is not that one jurisdiction has solved the problem. Rather, each contributes an element to a more complete Nigerian model. From England and Wales comes the explicit recognition of delay as a welfare issue and the use of detailed educational orders. From Scotland comes the conceptual language of parental responsibilities directed towards the child's development and welfare. From Ireland comes a clear legislative recognition that educational dependency can continue into university and that parental financial resources must be assessed systematically.

The four jurisdictions disclose a common normative principle but different institutional expressions. Nigeria recognises child welfare and educational maintenance through legislation and case law. England and Wales provide an explicit statutory warning that delay may prejudice welfare and have developed detailed mechanisms for financial orders and enforcement. Scotland frames parental responsibility around health, development and welfare and maintains a separate alimentary duty. Ireland expressly recognises dependent children in full-time education within its maintenance legislation and requires attention to parental financial resources.

Reforming Nigerian Child-Maintenance and Educational Justice

Finally, courts and judicial administration should collect data on the duration and outcome of child-maintenance proceedings. Relevant indicators should include time to interim order, time to final judgment, educational interruption, arrears at judgment and compliance rates. Without data, the welfare-delay paradox remains conceptually persuasive but difficult to measure. With data, it can become a basis for evidence-led reform.

Seventhly, enforcement should be integrated with the original order. Where educational fees are ordered and remain unpaid, the court should have accessible mechanisms for prompt enforcement, including appropriate attachment or third-party payment mechanisms consistent with law and due process. The English enforcement cases illustrate the importance of ensuring that a school-fee obligation does not remain merely declaratory^[96].

Sixthly, the Nigerian family justice system should develop expedited routes for child-maintenance applications involving imminent educational deadlines. Such a mechanism would give practical meaning to the best-interests principle by allowing the court to intervene before non-payment causes irreversible educational consequences. Fifthly, pension and retirement evidence should be treated realistically. The court should require evidence of pension income and other relevant resources where the issue is raised. A parent should not be assumed to have substantial means merely because retirement is alleged, but neither should retirement be treated as automatic proof of inability to contribute.

Fourthly, courts should consider the effect of delay on each child separately. In a four-child family, children may be at substantially different stages of education. One child's graduation should not necessarily extinguish consideration of the continuing needs of siblings who remain dependent. Conversely, a court should avoid making an outdated order for a child whose circumstances have materially changed. Individualised review is therefore necessary.

Thirdly, educational orders should be precise. Where the evidence supports it, an order may specify tuition,

examination fees, books, transport, accommodation or other reasonable educational expenses. Precision reduces the scope for later disagreement and simplifies enforcement.

Secondly, courts should have clear powers and procedures for interim maintenance. Where a *prima facie* parental obligation exists and immediate educational needs are demonstrated, the court should consider whether interim payments can prevent disruption while the final issues are litigated. Such orders should be reviewable rather than treated as irreversible.

The first reform should be early identification of education-related needs. At the initial case-management stage, the court should obtain information about each child's age, school or university, course of study, current fees, arrears, funding arrangements and foreseeable educational expenses. The court should also identify whether any child is at risk of withdrawal or interruption because fees are unpaid.

Synthesis: When Procedural Time Becomes a Welfare Factor

The preceding analysis supports a synthesis that is central to the article's thesis. Delay becomes a welfare factor when three conditions converge: first, the dispute concerns an aspect of a child's life that changes with time; secondly, the continuation of the proceedings produces or permits a material change in the child's circumstances or relationships; and thirdly, the final remedy cannot fully neutralise the consequences of the intervening period. The paradox therefore does not depend upon a particular number of months. It depends upon the relationship between time and the child's lived circumstances.

This formulation guards against an overly mechanical approach. A complex safeguarding case may legitimately require extensive investigation. A delay that protects the child from an unsafe order cannot be equated with a delay caused by avoidable administrative inactivity. The proper inquiry is consequently reasoned and contextual: what is the purpose of the delay, what welfare risks arise while it continues, what interim safeguards are available, and what is the likely effect of postponement on the eventual remedy? The concept also explains why interim relief and case management are central to substantive justice. A court that cannot yet determine final custody may nevertheless be able to regulate communication, supervised contact, school arrangements or other temporary matters. The objective is to prevent uncertainty from becoming the *de facto* outcome. In that sense, the best family-justice systems do not merely decide disputes quickly; they manage the period before final determination in a way that protects the child and preserves the possibility of meaningful final relief.

The welfare-delay paradox therefore provides a bridge between doctrinal law and institutional design. It asks judges, lawyers, court administrators and policymakers to treat time as a variable with legal consequences. That move is modest in form but significant in implication. It converts the question "How long has this case been pending?" into the more important question "What is the passage of that time doing to the child?"

Conclusion

The central challenge facing Nigerian family justice is not simply the absence of legal rights. Nigeria possesses significant constitutional, statutory and judicial protections for children and family relationships. The Matrimonial

Causes Act places children's interests at the centre of custody proceedings, the Child Rights Act provides a rights-based framework, and Nigerian appellate jurisprudence consistently treats welfare as the controlling consideration. The difficulty lies in translating these principles into timely, accessible and enforceable justice.

This article has argued that access to family justice requires more than entry into a courtroom. It requires legal accessibility, economic accessibility, procedural accessibility, temporal accessibility and remedial effectiveness. The temporal dimension is particularly significant where childhood and family relationships are the subject of litigation. A right that can only be vindicated after the relevant period of childhood has passed may remain formally valid while becoming substantively diminished.

The article's principal conceptual contribution is the welfare-delay paradox. The paradox captures the possibility that delay, although sometimes necessary for fair and careful adjudication, may itself alter the welfare circumstances that the court is required to determine. It therefore calls for a shift from viewing delay solely as administrative inefficiency to recognising that, in appropriate child-related cases, delay may be a welfare issue.

The UK experience provides valuable comparative support. Section 1^[2] of the Children Act 1989 expressly recognises that delay is likely to prejudice welfare. *ANS & Anor v ML* demonstrates judicial recognition that childhood is finite and that prolonged proceedings can have consequences that cannot simply be reversed by a later judgment. The lesson for Nigeria is not to transplant English law mechanically, but to recognise that the existing Nigerian welfare principle can and should be interpreted in a temporally sensitive manner.

The reforms proposed are therefore institutional and doctrinal: specialised Family Courts, expedited case management, effective interim arrangements, child-sensitive participation, strengthened legal aid, appropriate mediation, proportionate enforcement, timely judgment delivery and systematic data collection. These measures would not guarantee that every family dispute is resolved quickly or peacefully. They would, however, reduce the risk that the justice process itself becomes a source of avoidable welfare harm.

Ultimately, the measure of family justice should not be whether a court eventually decides a dispute. It should be whether the legal system protects the child and legitimate family relationships while the dispute is being decided. The child continues to grow while the litigation continues. That simple fact gives time legal significance. The welfare-delay paradox is therefore both a warning and a framework: a warning that delayed justice can become substantively inadequate, and a framework for designing a family justice system in which timeliness, welfare, rights and due process are treated as interconnected dimensions of justice.

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6. *ibid* s 2.
7. Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3, art 27.
8. *AZ v FM* (Rev 1) [2021] EWFC 2, especially [13]–[14], [38] and [64].
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