



PRESIDENT OF THE  
FAMILY DIVISION

**THE FAMILY JUSTICE REFORMS**

**Remarks by Sir James Munby  
President of the Family Division and  
Head of Family Justice in the President's Court  
29 April 2014**

We gather today to mark and celebrate the family justice reforms.

We stand on the cusp of history. 22 April 2014 saw the formal implementation of the largest reform of the family justice system any of us have seen or will see in our professional lifetimes. On 22 April 2014 almost all the relevant provisions of the Crime and Courts Act 2013 and the Children and Families Act 2014 came into force. On 22 April 2014 the Family Court came into existence and the Family Proceedings Court passed into history. On 22 April 2014 we saw the implementation of the final version of the revised Public Law Outline in public law children cases and the implementation in private law children cases of the Child Arrangements Programme.

Taken as a whole, these reforms amount to a revolution. Central to this revolution has been – has had to be – a fundamental change in the cultures of the family courts. This is truly a cultural revolution.

The origins of the family justice system stretch back to 1858, when the Court for Divorce and Matrimonial Causes was created. In 1875, for reasons which have more to do with scarcely remembered legal history than anything else, the Divorce Court was combined with the Probate Court and the Admiralty Court to form the Probate, Divorce and Admiralty Division of the new High Court of Justice. Its curious and cumbersome title nonetheless gave a pretty accurate description of what the

Probate, Divorce and Admiralty Division did throughout its life until it was swept away in 1971, when the Family Division was created out of its remains.

What is striking to modern eyes is how little of what used to be done in the old Probate, Divorce and Admiralty Division features in the world of the Family Court and how little of the work which now forms the staple of the Family Court was ever seen in the old Probate, Divorce and Admiralty Division.

In and after 1970 the law and practice of the family courts changed almost out of recognition. Before then, ancillary relief as we now know it was unknown, much of the private law children work now dealt with in the Family Court was heard in the Chancery Division and such public law children work as there was came to the Queen's Bench Division on appeal from the Magistrates' Court. The work of the old Probate, Divorce and Admiralty Division has in large measure disappeared. Admiralty cases went off to the newly created Admiralty Court. Contentious probate work went off to the Chancery Division. Reform of the divorce law, and changes in divorce procedure, meant that divorce became an essentially administrative process, largely invisible to the public though still supervised by judges.

Perhaps in no other area of our law have there been such changes in recent decades as in family law.

Until very recently, family law was concerned largely, if not exclusively, with the family wrought in the image of Sir James Wilde's famous definition of marriage in 1866. How much things have changed.

The family, though fundamental to society, has undergone dramatic changes in recent decades. There has been a striking decline in marriage. Children live in households where their parents may be married or unmarried. They may be brought up by a single parent. Their parents may or may not be their natural parents. They may be the children of parents with very different religious, ethnic or national backgrounds. Some children are brought up by two parents of the same sex. The fact

is that many adults and children, whether through choice or circumstance, live in families more or less removed from what, until comparatively recently, would have been recognised as the typical nuclear family.

And only this year we have seen the introduction of same-sex marriage, something that would have been thought inconceivable even very recently.

Many of these changes find their origins in the societal changes of the 1960s, some of which found their reflection in the law and practice of the new Family Division in the 1970s. But much is considerably more recent.

With the benefit of more than 40 years of hindsight, we can thus see that the reforms of the 1960s and 1970s, essential though they were, did not go far enough. In particular, they did not give us the Family Court and they did too little to improve the practice and procedure of the Family Division and the other family courts. For all this, and much more, we had to wait until the Family Justice Review was set up in 2010.

It is precisely 40 years since the Family Court was proposed by Sir Morris Finer, and he, alas, did not live to see its arrival. How long it always seems to take to achieve even the most obvious reform! The creation of the Family Court surely marks the proper culmination of the process which in 1971 had seen the Family Division created out of the remains of the old Probate, Divorce and Admiralty Division. It involves much more than merely changing the sign outside First Avenue House or the headings to our orders. In years to come it will come to be seen as *the* decisive break with the past.

What is the Family Court, and why is it so important?

The Family Court deals with ALL family cases with the exception of two classes of case reserved for the Family Division: (a) cases under the inherent jurisdiction of the High Court; and (b) international cases. The judiciary of the Family Court includes all

levels of judge: High Court Judges, Circuit Judges and Recorders, District Judges and Magistrates. Wherever possible all the judges of the Family Court sit under the same roof. England and Wales continue to be divided into geographical areas judicially led and managed by the Designated Family Judge. Within that area, all the locations at which hearings take place are managed and operated as a single Family Court. There is, for the entire local Family Court, a 'single point of entry' for the issue of proceedings and a centralised and unified administration. There is a centralised 'gate-keeping and allocation team', allocating cases at the outset for hearing before an appropriate judge at an appropriate place. There is centralised listing.

What does this mean for the children and families we serve? It is the essential underpinning for the new system. Together with fundamental changes in practice and procedure, it will go a long way to eradicating the scourge of delay and giving us a modern, efficient, just and speedy family justice system.

In large measure the new Family Court has, for most practical purposes, now been up and running for some time. In some places – not as many as I would wish, for financial resources are limited – work has been going on finding space in existing buildings to be adapted for additional courts. This is particularly important where the consequence is that Magistrates will for the first time be able to sit in the same building as their professional judicial colleagues – something which is very important if we are to make a reality of the Family Court.

The most visible changes are in London. The Principal Registry of the Family Division at First Avenue House is now the Central Family Court, having merged with the old Inner London Family Proceedings Court, previously at Wells Street. The administrative functions of the PRFD have moved to the Royal Courts of Justice. There are two brand new courts in London: the West London Family Court at Hatton Cross which opened earlier this month; and the East London Family Court, which has opened in temporary premises pending its move to its permanent home in Docklands later this year.

So much for the Family Court. What of the Public Law Outline?

The first of the recent campaigns to modernise the family justice system was fought in the 1990s, leading to an immensely successful streamlining of the ancillary relief system. Attempts to reform public law care cases followed not long after. Coleridge J played a key role in that. After his arrival on the Bench, and hitherto largely immunised from the realities of public law child care cases, he was astonished to discover a system in which coherent control was largely lacking; a system which, in the High Court, relied upon the urgent applications judge to master overnight the numerous lever arch files in sometimes 2, 3, 4 or even more care cases so that the judge, who had probably never seen the case before, could add his directions to those given by an almost unbelievable number of judges who had previously had the case. Others who, like Sir Paul, had come to this chaos from similarly sheltered backgrounds were also astonished. But he did something about it. He wrote to the President, Dame Elizabeth Butler-Sloss. The result was the setting up of the Lord Chancellor's Advisory Committee on Judicial Case Management in Public Law Children Act Cases. It was my great privilege and pleasure to serve with Paul as the Joint Chairmen of that committee. A young Mr Ernest Ryder QC toiled away in the boiler-room as we stood on the bridge. The product of our labours was the Protocol for Judicial Case Management in Public Law Children Act Cases, issued in June 2003, the ancestor of the Public Law Outline. If it was Ernest whose herculean labours were primarily responsible for the Protocol itself – he was, as the final report of the Committee acknowledged, the “drafter-in-chief” – Paul's hand was clear to see in the report. And what was his solution?

“Key elements” to the achievement of the “paramount objective” of improving the outcomes from children by reducing unnecessary delay, were identified as – wait for it – judicial continuity and case management, improved listing arrangements, time-tabling to final hearing, rigorous control of the use of experts and control of the content and quantity of court documentation. I think we can say we got it right! But we had only limited success. There was only so much the judges could do without legislative changes. That is why the two key recent statutory reforms are so

important: the eradication of unnecessary expert reports and the imposition, subject to a narrowly defined exception, of a statutory maximum of 26 weeks for the hearing of any care case.

But even more was needed. Judicial continuity and robust judicial case-management in individual cases is vital, but not enough. There has to be judicial monitoring and management of the entire family justice case-load. The role of the judges is vital, especially for those – the Designated Family Judges, the Family Division Liaison Judges and the President – who have key leadership and management roles to play.

But the reforms which we all in our hearts knew were essential could be achieved only if *all* the professionals in the family justice system played their part. And everyone has risen to the challenge. The result of everyone's dedication and hard work has been a continuing reduction in the time that care cases are taking. Large numbers of the older cases have now been resolved. The backlog is reducing both in size and in age. This is a remarkable achievement in which we can all – every one of us in the family justice system – take pride.

I recently finished my self-imposed task of visiting every care centre. Those visits have brought home to me just how enthusiastically and with such determination and commitment everybody in the family justice system has embraced the process of reform – and I mean everybody: local authorities and their social workers, CAFCASS and its officers, court staff, judges (in whom, of course, I include the magistrates), justices' clerks and the legal professions.

Can I take a moment to mention the Designated Family Judges. They are a remarkable body of dedicated men and women to whom we should all be grateful. They are the crucial hinge on which the entire family justice system turns. Their local leadership, drive and initiative are vital if the system is to work as it must. They have proved tireless in driving the process of reform forward throughout the areas for which they are responsible. They deserve our gratitude for their cheerful willingness to undertake a task that is both thankless and onerous.

In my second year as President I look back on a year when, between us, we have managed to achieve more than most of us had dared to hope. I look forward to a year of what I am sure will be continuing challenges as we move forward on a continuing process of creating a transformed family justice system which in due course we will all be able to look to with pride.

Last year the focus was very much on public law – the revised PLO – and setting up the Family Court. This year we must continue all that good work. But the immediate focus now must be on the necessary changes and reforms in relation to private law. The task here is, if anything, even greater and more challenging than all the changes associated with the revised PLO. The new Child Arrangements Programme, for which we owe so much to Cobb J, requires fundamental changes in our whole approach to private law cases. A system based on the assumption that parties are represented must be radically re-designed to reflect the reality that parties will no longer be represented in a new world where there is so little legal aid. And the concept of the court's continuing monitoring and review function following the substantive hearing – the legacy of ideas rooted in old wardship practice – will in large measure become a thing of the past. That there can be no room for complacency about our current practices is evident. There is a massive task ahead of us.

In private law we must embrace as enthusiastically as in public law the techniques which we know work: judicial continuity, judicial case management, robust timetabling, and rigorous control of the unnecessary use of experts and proliferation of paper. But there is more to be done. We must encourage and make an effective reality of methods of non-court dispute resolution, mediation in particular. Much time has been lost. There is much to do.

In the courtroom we must adapt our processes to the new world of those who, not through choice, have to act as litigants in person. We need to think anew about the appropriate roles in the court room of McKenzie friends and other lay advisers. We will need to make our judicial processes more inquisitorial. Do not misunderstand

me: I am not advocating adoption of the continental inquisitorial system. Our system, and for good reason, is essentially adversarial, even in the Family Court. But it is a system very different from the adversarial system of yore. Then the judge functioned as little more than an umpire, adjudicating on whatever claim the litigant chose to bring, the only limitations being the need for some recognised cause of action and the requirement that the evidence had to be both relevant and admissible. Those days have long since gone. Modern case management imposes on the judge the responsibility of deciding what issues will be argued and what evidence will be permitted. The process before the judge may still be adversarial, but it is a dispute fought in accordance with an agenda set by the judge, not the parties. But that, of course, assumes that the parties are represented. Where they are not, then the judge must take a more active role. The hearing is more likely to produce the right and just result if the judge adopts a more inquisitorial approach.

That is where matters stand for the moment.

There are many whose contribution to this revolution needs to be recognised and marked. Pride of place must go to David Norgrove, the mastermind of the Family Justice Review. Only those who have worked closely with him will know just how inspired and inspirational his work has been – and continues to be. His achievement has been colossal. It is little over four years ago that the Family Justice Review was set up. In that short time it has reported, it has seen its recommendations accepted first by Government and then by Parliament and then implemented under the collaborative leadership of the judiciary and the Family Justice Board, also chaired by David. Has any comparable body of reform ever been introduced so quickly, so smoothly and so effectively?

Inspired choices were made by my predecessors in identifying the judges best suited to bring this process to such a successful conclusion. Sir Andrew McFarlane and Sir Ernest Ryder are both immensely gifted but their greatest skills lie in rather different directions. Sir Mark Potter P had the insight to recognise that Andrew was the ideal judge to take part in the Family Justice Review. Sir Nicholas Wall P had equal insight



in recognising that Ernest was the ideal judge to be appointed Judge in Charge of Modernisation. It is gratifying that each has since been elevated to the Court of Appeal which has played – and will continue to play – a vital role in ensuring that the process of reform is kept on its proper track.

What of the future?

A vital aspect of this transformation in the family justice system has to be reform of our still creaking rules about access to and reporting of family cases. Nothing short of radical reform will enable us to rid ourselves of the relentlessly repeated and inevitably damaging charge that we operate a system of private – some say secret – justice. The task is massive: the complexity of the law is quite astonishing and the differences of view as to what should be done run deep and in some aspects seem almost unbridgeable. The history of attempts at reform is unpromising. But something must be done. It would be scandalous if in 5 years time we were still trying to muddle along as we do at present. We have made a start. More judgments are being published by the judges and reported in the media than ever before. But that is only a first step. We must continue the process, even if only incrementally. I expect to be able to bring forward very shortly proposals for discussion as to what the next steps might be.

So much for the institutions; what of the substantive law? I should be very surprised if our law of ancillary relief does not undergo more or less radical reform over the coming years. The process has already started, prompted by important re-direction of the law by the Supreme Court and the recent report of the Law Commission. Those of the Law Commission's recommendations which do not require legislation surely require early implementation. We need to reconsider practice and procedure so as to facilitate the use of out-of-court methods of resolving financial disputes, whether by mediation, arbitration or other appropriate techniques, at the same time further reforming the court processes in such cases to bring to bear all the techniques of judicial continuity and case management which have been so successful in children cases. Our aim, as with every aspect of the family justice

system, must be to simplify and streamline the process so as to make it more user friendly for litigants in person and cheaper for all.

This takes me on to the long-running problem of cohabitant's rights. If a marriage is terminated by divorce the court has power to redistribute the matrimonial assets between the spouses. There is no such relief for cohabitants when their relationship breaks down, however long the relationship has lasted. This is an injustice which has been recognised as long as I have been in the law. Reform is desperately needed. The Law Commission has recommended reform. Thus far Governments have failed to act. Reform is inevitable. It is inconceivable that society will not right this injustice in due course. How many more women are to be condemned to injustice in the meantime?

Finally, divorce. Has the time not come to legislate to remove all concepts of fault as a basis for divorce and to leave irretrievable breakdown as the sole ground? Has the time not come to uncouple the process of divorce from the process of adjudicating claims for financial relief following divorce, just as we have finally uncoupled the process of divorce from the process of adjudicating disputes about the children following divorce? Indeed, may the time not come when we should at least consider whether the process of divorce still needs to be subject to judicial supervision?

In 2003 the Oxford University Press published a most remarkable book, Dr Stephen Cretney's magisterial *Family Law in the Twentieth Century: A History*. By the end of his book, one was left with a very powerful impression that, even when looking back into the comparatively recent past, so much of what Cretney was chronicling had surprisingly little in common with the contemporary family justice system and the activities of the judges. In 2003 the traditional family law – the law of the traditional family – so vividly described by Cretney was already slipping away. A new era was dawning. The day has now come.

I began my pupillage, as it happens, on the day the Family Division came into existence on 1 October 1971. In those days the wall above the bench in the

President's court was adorned with the Admiralty anchor. That has long since gone. My pupil master, John Waite, later a distinguished judge of the Family Division and later a Lord Justice of Appeal, quipped that the anchor should surely be replaced with something more suited to a family court, perhaps a pram. For some reason his suggestion was never taken up, and the wall remains bare.

Today in memory of the past the Admiralty Oar sits before me. But we must look to the future. When Cretney's successor in the next century comes to write *The History of Family Law in the Twenty-First Century*, what will they make of our century? Happily, perhaps, we will not be here to be told. We are at present writing the first chapter. Further chapters will unfold in the years ahead. But whatever the future holds we can be confident that future generations will see April 2014 as the turning point.

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