THE INAUGURAL BRIDGET LINDLEY ANNUAL MEMORIAL LECTURE

Motion:

"Holding the Risk: The Balance Between Child Protection and the Right to Family Life'"

on

Thursday, 9th March 2017

CATHY ASHLEY:

I have got my tissues, just in case. There are some in this room who knew Bridget extremely well. Indeed, there are some such as Kate, Sam and Robin, whom she literally produced. There are some in the room whose lives were transformed by the legal advice she gave, or her friendship, and in some cases, by both. Still, there are others not lucky enough to have known Bridget as intimately, so I thought I would try and describe Bridget Lindley.

Bridget was a bundle of contradictions. She could be resolute and yet knew when to compromise in order to secure changes in society. She identified problems within child welfare systems and brimmed with ideas and solutions, yet she could not cope with anyone so much as moving a chair in her office. She would lecture me about how we were both working too hard, and then within minutes, would come up with more injustices that we needed to address or projects that we had to pursue.

She could be infuriating and yet she was the most exceptionally generous friend who you could wish for, always with you every step of the way when you needed someone at your side. She was staggeringly intelligent, exceptionally articulate, stunningly beautiful, intellectually confident and convincing, even in the scariest of high-powered meetings. Yet, she had no idea of her own brilliance or the respect that she engendered. She would be truly amazed that the Family Justice Council had dedicated an annual lecture in her name, yet she would have also loved it.

Bridget was driven. She was passionate about improving our society, both at home and internationally. She believed in democracy, fair process, in human rights, and in promoting the welfare of children, particularly the most vulnerable. She regarded them, in the main, as complementary rather than contradictory values.

Bridget qualified as a solicitor in 1986 and after doing legal aid work in Darlington and Parkinson in London, she joined Family Rights Group in 1988, initially as an advisor. She later became our Principal Legal Advisor and in 2004, she was appointed Deputy Chief Executive. She was appointed as Parents and Relatives Representative on the Family Justice Council in 2007, and during her eight years' service, was a challenging, constructive presence, directly involving service users in Family Justice Council events. She continued in her joint role as Principal Legal Advisor and Deputy Chief Executive at Family Rights Group until her death on 2 March 2016.

Bridget continues to have influence, despite her death. In January, Family Rights Group published an Initial Family and Friends Care Assessment good practice guide, some of you will know it as the Viability Assessment: A good practice guide, endorsed by the Family Justice Council, Cafcass, Association of Directors of Children's Services, and many other esteemed bodies. It was a cooperative venture and the brain child of Bridget.

Last week, Edward Timpson, Vulnerable Children and Families Minister, announced that the Ministry of Justice had agreed to extend non-means and non-merits tested legal aid to all parents subject to court proceedings, whose children may be adopted. This was the result of a campaign instigated by Bridget.

Earlier this week, the minister announced that care planning regulations would be strengthened in respect of sibling contact for children in care. He also agreed to revise guidance to make explicit the importance of meeting the therapeutic support and counselling needs of young people in care, and care leavers whose own children had been removed. Again, Bridget's hand was behind the original amendments that were drafted to get this onto the government's agenda.

Bridget's work carries on and this lecture is part of her legacy. I feel it particularly fitting that Lord Justice Andrew McFarlane is giving the first annual Bridget Lindley lecture. Firstly, because Bridget was very fond of, and had a huge amount of respect, for Sir Andrew's intellect, thought process, his judgment and his kindness. She really liked him, well, how could you not?

Secondly, because she had something in common with him, a wonderful gift. Despite their own brilliance, they never look down at you. They take it as read that you are as talented as they are and have something worthy of contributing to any discussion, and as with any extraordinary teacher, in their presence you rise to prove them right.

It is still one of the mysteries of the universe as to how I managed to be appointed as Chief Executive at Family Rights Group thirteen years ago, but Bridget, instead of seeing me as an ignorant, annoying upstart, took me under her wing and guided me towards understanding the intricacies of child welfare and human rights law. She sharpened my thought processes and she literally sat side-by-side with me until late at night as we wrote funding bids, responded to consultation documents and drafted briefings on legal and practice reforms. I now realise it was a thirteen-year apprenticeship for the time she would no longer be physically next to me.

Thank you to the Family Justice Council, thank you to Sir James Munby, and to the panel for tonight's event. I am delighted to introduce Sir Andrew McFarlane.

THE RT HON SIR ANDREW MCFARLANE:

I am glad you did not rise to the interactive part of that little introduction. A few words from me about Bridget. She was, in my view, an exceptional individual, as Cathy has just reminded us, who dedicated thirty years, effectively her career, to the work of the Family Rights Group. As a highly intelligent and focused lawyer, Bridget could have succeeded in any field of legal endeavour to which she set her mind and no doubt earned accolades there and significant financial reward for herself in the process. The fact that she chose not to pursue personal

success but to devote her working life to the cause of family law and its improvement was to the great benefit of all of us who knew her but, more importantly, to the benefit of countless children and families.

It is no surprise that one of the two people who were invited to join the newly formed Family Justice Review, under the chairmanship of Sir David Norgrove, to present ideas to the review's very first meeting, was Bridget Lindley. Her authoritative contributions both at that important first meeting and then throughout the process, commanded the attention and the respect of the entire panel.

I regarded Bridget as a superb children's lawyer, whose views on policy and how key policy aims might be met were always as sound as they were clear. I admired her greatly as a fellow professional and enjoyed her company as a friend. It is so desperately sad that her life ended so suddenly when she was still at the very peak of her powers. She is greatly missed and the Family Justice Council are to be congratulated for instigating this series of lectures in her memory. I myself am very humbled and honoured to be asked to be the first lecturer.

The title of this evening's lecture, 'Holding the Risk: The Balance Between Child Protection and the Right to Family Life', was not chosen by me. It was chosen by, I think, the Family Justice Council, but by the President. It is a big title and apart from mourning Bridget's passing in the last three or four weeks, I have been mourning the fact that we are having this event at all for different reasons, and I have been thinking of how I would have phoned Bridget to ask her what to say.

In preparing for this lecture over these last few weeks, I have had the benefit of conversations with a number of friends and colleagues who have been kind enough to share their views on the question of whether the balance is right, on the one hand between the need to protect children from harm and, on the other, the need to respect family life.

More than once during these conservations, I have had cause to recall the memorable scene in Monty Python's Life of Brian where the chief conspirators in the plot, to overthrow the Roman state, Reg and Stan, meet with others to discuss the revolution. The response to Reg's presumably rhetorical question, ‘And what have the Romans ever given us?’, is a whole list of helpful suggestions from the mild-mannered co-conspirators, leading to the following concluding exchange. Reg, ‘All right, all right’, it is John Cleese, I cannot do John Cleese, ‘All right, all right. But apart from better sanitation and medicine and education and irrigation and wine and public health and roads and fresh water systems and baths and public orders, what have the Romans ever done for us?’ Xerxes, ‘Brought peace!’

Those who practise regularly in the field of family law may be forgiven if we do put forward discrete small issues that may currently be at the tipping point, one way or the other, of the balance between child protection and family life. That is indeed what I am going to talk about in this lecture. It is crucial that we do not lose sight of the big picture, ‘What have the Romans ever done for us?’

Well, the big picture is, in my view, that in our jurisdiction, Parliament, informed by the Law Commission, and then the courts and the practitioners (that is legal, social work and medical) have, over the course of three decades, developed a highly sophisticated system which affords very significant regard both to child protection and to human rights. Indeed, it is because of the high level of knowledge and experience that has been developed in our system over these years that we can contemplate the need for some fine or, as I may tentatively suggest at the end of this, some gross, further tuning of what may be needed.

In order to make good the claim to sophistication that I have just made, it is necessary to describe in broad terms the landscape within which the debate sits. Now, I have not timed this lecture but I know it is going to overrun the forty-five minutes allotted, so I am now going to skim through, if you read the lecture, what is quite a section on child protection and the history of what we have achieved in the last three decades. I am sorry to skim it for you but I want to get to the suggestions for change that I make.

The history is quite striking. 1960s, 1970s, the idea that parents would hit their children and cause injury was not accepted. The medical profession had something called non-explained infant trauma syndrome. They had these children with bruises and fractures but parents of course said they did not do it, and of course they would not, so what did cause it? So that is the 1960s, 1970s.

Then we go on to society accepting child sexual abuse as occurring and then the pendulum swinging as to how you diagnose that. The Cleveland Review, 1987 and onwards, and then after that we get to understand more subtle forms of abuse, emotional harm and the rest. Within that, we collectively, all the different professions, have developed the way of interviewing children. Do you remember the anatomically correct dolls? One issue of Family Law Reports was devoted entirely to cases by the High Court judges deciding how you could use or not use anatomically correct dolls. Then came the development of ABE interviews and those did not drop from the sky; an awful lot of work over a period of some years was undertaken to finesse just what was needed there.

The Royal College of Physicians' little booklet, as it was when it first came out in 1991, 'Physical Signs of Sexual Abuse', I have got it, I meant to bring it along, but, it is tiny. It is A5 and it runs to under one hundred pages. The current edition, 2015, runs A4 size to over three hundred pages. Our knowledge, our sophisticated knowledge of all these matters is developing all the time. What goes on in a baby's head when he or she might have been shaken, clearly is something that we are now getting more understanding of but I am not sure it is entirely settled.

Then, along the way, factitious illness, parental alienation syndrome, possibly ME, ADHD, spiritual abuse and other matters. Then, now more recently, the idea that adverse childhood experiences (ACE) can be categorised and if a child, it is the wrong phrase, but if a child has more than one ACE, and if a child has a number of ACEs in their childhood, then the cocktail of these, maybe each of them fairly low grade, but the coincidence of these, each of them potentially damaging experiences, increases the potential for the child to suffer long-term emotional harm.

The diligent professional work over decades of those in the medical profession and elsewhere who have developed an understanding of what is, and also what is not, harmful to children, has produced a body of knowledge which can only be seen as highly sophisticated when compared to what was available, say, in 1970, 1980. That is plainly beneficial, in general terms, to the protection of children, which is what we seek to serve in this jurisdiction.

There is, however, a further important point to make. The fact that I, as a lawyer, wholly untutored in the medical world, can speak to you of these disparate and complicated matters. What is more, each of you who is a lawyer in the audience, knows precisely what I am talking about, and have had your own professional experience of dealing with individual cases engaged with these topics down to a granular detail, is to my mind, something that speaks volumes and marks our system out, at least from those others across the world of which I have some knowledge, as being an approach to child protection which is of the highest order.

At the risk of speaking in a manner that is wholly unjustified, or may be wholly unjustified, I then go on to make some comparison with Europe and what I understand similar cases experienced when they go through the court system there. However, it is no part of my pitch to you to adopt an arrogant position and suggest that our approach is somehow right, or that other jurisdictions are wrong. My point is simply that it must be wholly beyond argument that we attach a high premium to understanding and, where it exists, identifying, circumstances where children are, or are likely to be, experiencing significant harm.

Secondly, this is not a one-sided process. One of the great benefits of our system, driven as it is by the regard afforded to human rights for the family and those accused of abuse, is the degree to which we not only tolerate but welcome robust and informed challenge to the detailed evidence in an alleged abuse case.

Comparisons are often made by those who are responsible for the Legal Aid bill, with the cost of child protection proceedings in this jurisdiction, and the cost elsewhere, but you are not comparing like with like. What we do is very intensive, it takes time, and it is very thorough and it costs money, and resources have to be applied to it in like manner.

Again, with more than an eye to the human rights component, a cardinal benefit that arises from the court steeping itself in the very detailed understanding of the harmful events that the child has experienced in the past, is that a bespoke and proportionate plan can be established for the future and, in particular, so that that plan may, in the right circumstances, and despite what has happened in the past, contemplate the child being brought up either by her parents, or at least elsewhere in the natural family.

One example, and I go into more detail in the script, is that ten or fifteen years ago, if you had a case that achieved a finding that the baby had been shaken, by and large, the child would not go home and the other children in the family may well be permanently removed. Well, now that is not the case. Our understanding of

what may go on in these circumstances can, and often does, readily lead to the family being assisted to live life in a different way and avoid the stress and circumstances that led to the injury.

Turning more shortly to the second half of the big picture, namely respect to family life, it is my belief, in like manner, but obviously different terms to that achieved with child protection, we have developed a sophisticated understanding of that and I am taking this topic shortly because the history of its development and the fruits thereof are well known. Every single case about child protection in the country, at every level of court, I suspect, refers to, and has in mind, the Supreme Court decision in Re B in 2013. I recently devoted an entire lecture to the topic, 'Nothing Else Will Do' and I do not intend to repeat any of that here. It is all well known to all of us, but we do that side of it, I think, with similar thoroughness.

Drawing matters together in terms of the big picture, I consider that as a result of the professionalism, dedication and experience of very many who have been involved in this work over the past two or three decades, not least, of course, Bridget Lindley, whose memory we celebrate tonight, we have developed, and are continuing to develop, a system that seeks to afford full regard to the need to protect children from significant harm but, at the same time, respects the human rights of those directly affected by any decision. It is at least adequate, I hope, in every single case, and in the high-end cases, as has been said to me, it must be seen as a 'Rolls Royce process' with high quality judges, free legal aid, the highest standard of legal representation, world-class experts, and with the voice of the child being separately represented by a team of equal standing to the other parties.

There is, however, no room for complacency. Despite the deployment of high calibre resources, the courts sometimes get it wrong and must not be afraid so to find, if that is the case. Recent examples on either side of the line are the case of the Webster family (I am not going to go into the details, you will know the case of Webster against Norfolk County Council in 2009) and more recently, the decision of the Family Court to return young Ellie Butler home, only for her to be murdered by her father eleven months later.

These individual tragedies, which undoubtedly they are, are also tragedies for society in general. The consequences of them underline just how high-risk the decision may be in a child protection case. The court order may remove a child from his or her family for the rest of their natural life, when, in truth, in a case that has gone wrong, there is no justification for doing so. Or the court may send the child home, believing that there is no continuing risk of harm, when, awfully, the contrary is the case.

That these high profile failures, when compared to the court's annual child protection case load of around fifteen thousand are few, is no justification for complacency. Magistrates and judges who are making these important decisions, case by case, on behalf of society in general, carry a heavy burden. In terms of who in society holds the risk in these cases, the answer is that more and more often, I think, it is the magistrates and the judges.

Despite the very positive description that I have given of the big picture thus far, there are three topics which have caused me to hesitate and to hold back from simply concluding that all is well and sitting down and calling my

lecture to a halt at this stage but, before I turn to these causes for hesitation, these three 'buts', as I call them, I propose to take a different tact for a short time and flag up a few short suggestions as topics for fine tuning of the system as it is at the moment. There are six of them.

One, Neglect and Resources. The first point relates to neglect cases. I do not have statistics but it must be the case that low to medium cases of persistent neglect make up the majority of care and adoption cases before the court. In such cases, reference is had, and rightly so, to Mr Justice Hedley's dicta in Re L in 2007. In every case, there is a line to be drawn or, as a matter of strict legal structure, two lines, in deciding (a), whether the threshold criteria in Section 31 are met, and (b), whether the child's welfare requires placement away from the family. It is easy to describe the structure. It is easy to refer to Re L, but, in these cases, which sit at the very cusp, making the decision whether to remove a child from home or leave her there is often far from easy. Where is the line? Who is drawing the line? There is no neat Court of Appeal authority to help you with the nitty gritty decision as it falls to be decided case by case.

A good deal must turn on the value judgment of the court, assisted by professional evidence as to what may or may not cause significant harm to a child. Courts are schooled to avoid social engineering. In Re B, Baroness Hale construed Lord Templeman's well known dicta in Re KD, as, 'Public authorities have no right to improve on nature'. Nor do they, yet, in this field, the danger of seeking to do exactly that is plain to see. Social engineering and child protection clearly sit on the same continuum; discerning where the line is drawn between the two is far from easy and far from plain.

In Re B, Baroness Hale, after referring to Mr Justice Hedley in Re L, stated, paragraph 182, 'But clearly we do remove some of these children, the difficulty is to identify what it is that tips the case over the threshold. Although every parent, every child, every family is different, and as Mr Justice Hedley put it "significant harm is fact specific and must retain the breadth of meaning that human fallibility may require of it", there must be some consistency in the approach of both local authorities and the court.'

Into this complicated mix, we must introduce the impact of resources or the lack of them. In a neglect case, which is really what I am talking about, where permanent removal is a borderline decision, the question of what resources can be introduced into the home to support the parents may be determinative of the outcome. Resources have never been limitless and in the current climate they are often scarce. Where, prior to court proceedings, the available support to a family is considered by social services to be insufficient, they simply have not got the resources to put in, but they have identified the risk of harm, then the risk cannot be left there, it cannot be left unaddressed.

After the decision in Baby P, social services are much more risk adverse and the tendency is to transfer the risk to the court by issuing court proceedings. As we know, the number of court cases went up after Baby P. It was not a spike, the water table simply rose, to use a phrase that Sir Roderick Wood posited some years ago. These

cases might be said to be in some form of resources tunnel; they are stuck, and they are travelling down a particular direction because there are not the resources there to deflect them off in any other avenue.

In such a case, the court is faced with an application to remove the child because the resources are not there for continued placement at home. The court, despite, no doubt, investigating the alternatives, may itself find itself hemmed into, in the same tunnel, the same space, because of lack of resources, with removal seen as the only safe prospect. Whilst I do not do anything more than flag this scenario up without offering a solution, I fear that it is typical of many cases up and down the land, often heard by the more junior members of the family judiciary, where finding the balance between child protection and family life is a very real and pressing daily issue and where guidance as to just where the line is drawn and how the risk may be held, is thin on the ground.

In this regard, fresh thinking by social work academics, such as the book, 'Re-imagining Child Protection' by Professor Brid Featherstone and others (University of Bristol 2014) may provide a way forward.

Short point two, Post-Adoption Contact. When the Adoption and Children Act 2002 came into force, there was some expectation that the previous approach to post-adoption contact, which heavily relied on the closed adoption model, with, at most, modest letterbox contact, might change. In Re P 2008, relying on the earlier priority given by Baroness Hale in the Down Lisburn Health and Social Services Trust case in the House of Lords, Lord Justice Wall contemplated a possible ‘sea change’ as he put it, under the 2002 Act. Now, a decade later, the answer to the question as to whether there is been a sea change is ‘no’. Even the introduction by the Children and Families Act 2014 of bespoke provisions for contact in adoption following a placement order (that is the new section 51A and 51B) do not seem to have moved matters on, so far as I can see.

Research by Dr Elsbeth Neil and others at UEA has recently concluded a long-term project on the effects of post-adoption contact, and the link is there in the published version of this text. It should be required reading for us all. Recognising, whilst planning for an adoptive placement for life, that the adoptive individual will have other ongoing support needs, particularly in adolescence, is very important.

Planning for, building on, and supporting contact, possibly with relatives other than those in the immediate centre of the care proceedings, can be very helpful in the long-term. We are making long-term, lifetime decisions for these individuals. It goes without saying, and here I do think there has been a change, that the need for continuing contact for siblings must be prioritised.

However, I do wonder, in this regard, if the old case law (reaffirmed in a 2010 case of Re T) can stand. It gives a priority to the views of the adopters. Is it right that the views of the adopters should always hold such sway? In all other respects, when cases come to court, for example a grandparent is saying, ‘I think the outcome should be this’, they are told that what is thought to be best for the child must prevail. Well, why, if it is thought that face to face contact with the child is in that individual's interest, should the views of the adopters to the contrary, if that is the case, hold sway and given them an effective veto?

When the adoption order is made, emotions are often at their highest and that is often perhaps not the best time to consider what the contact arrangement should be. The new section 51A gives the court jurisdiction to make a contact order at the time the adoption is made, or 'at any time afterwards'. I ask rhetorically whether, in the right case, there is not some justification for the court saying, 'Well, I am not making a contact order now, other than something basic, but I want this case back in two years' time, or whatever it might be, to see what the situation is then'. How the parents have come to terms with what has happened, how the adopters have come to terms with what has happened. How they now know the youngster who is in their care, their child, as he or she will be. So that the question of having some contact, as the child moves on through adolescence, with someone in the family may be considered because we are dealing with someone who is very soon going to be an adult and a bridge back to their roots in some way must surely be something that needs to be considered far more carefully than I fear we do at the moment.

Three, Benefits from Focusing on Parents. My third short point concerns interventions such as FDAC, the Family Drugs and Alcohol Court and Pause, and again, there is not time to tell you about these if you do not know what they are. I think you all know them.

I simply ask (a) why did it take us so long to get to FDAC and Pause when they are plainly so beneficial in the right cases, and (b), what other models of intervention should we now be considering to develop in similar lines? In this regard, it was very heartening to hear the Lord Chancellor expressly endorsing the work of the FDAC courts in her interview with Joshua Rozenberg on Law and Action on Radio 4 this week, Wednesday 4 o'clock, still available on the iPlayer. It is worth listening to, the whole interview. It is not often you get a politician interviewed for a whole half hour on a range of subjects, and for about five minutes she is talking about various family law topics.

What else can we be doing for these cases? Of course, the welfare of the child is paramount, but unless we can help these parents, some of them, the FDAC sort of parents who are stuck, repetitively coming before the courts because of problems deeply set in their background, then we are not necessarily helping the children that they may give birth to, or helping our system.

Four, Special Guardianship Orders. My fourth short point relates to SGOs. They are now not infrequently put forward, often at a late stage as a solution which may keep a child in the family as opposed to moving on to an out of family placement. In the right case, they have got much to offer, but there is a fear, certainly amongst some of those to whom I have spoken, that they may be being overused in cases where there has not been enough time to assess the special guardians thoroughly. If problems occur down the line and further court proceedings are needed because of a difficulty between some of the family members, these will be private law proceedings. Legal Aid will not be available and the individuals and the court have to cope with the difficulties that result.

The pressure to conclude proceedings within 26 weeks during which the candidate for special guardianship may not have stepped up until a late stage, adds to the feeling that in some cases, making the order in some haste gives cause to repent at leisure at a later stage. In this regard, the recent beefing up of the Special Guardianship Regulations by amendment regs in 2016 and associated statutory guidance in January of this year is welcome, as is the Viability Assessment tool kit which as Cathy has said, was one of the many brainchildren of Bridget, and was recently launched by the Family Rights Group.

Five of my six, Domestic Abuse. Because of the focus I have chosen in the lecture, I have had to reduce these other topics to no more than a short mention, but rather than not mention it at all, given its importance, I say what I say about domestic abuse now. In short terms, and in the context of the balance between child protection and family life, I really do wonder if we are getting it right with regard to domestic violence. From my perspective, locked in the audit department in the Court of Appeal, I no longer see any of the actual cases and so others in this room will have more knowledge than me.

To my view, the prevalence of domestic abuse, and it may not necessarily involve any direct physical violence, has sadly not abated despite interventions over a number of years by different governments and by different agencies. Domestic abuse is a feature, I am told by Cathy, in the majority of the phone calls that are made to the FRG Helpline. This is a topic now which, rightly, has a priority in No 10 Downing Street and there has been a list of initiatives announced during the past few months. It was a topic in Liz Truss' interview on Wednesday.

What about us? How are we, in the courts, measuring up to achieving the best outcome for children and families in these very common cases? Often, by the time the case comes to court, the victim may have gone to a refuge or may be being encouraged to go to a refuge, and that may be the inevitable safe place in some cases. But surely it is better for children to remain in their home in familiar circumstances with protective measures put around them and support introduced. I wonder how many courts use the power to make exclusions orders against the alleged perpetrator under an interim care order under section 38A of the Children Act.

In terms of the victim, also, I wonder if we are as clear in our analysis and our understanding as we ought to be, of the joint roles of someone who is both a victim and a parent. Finally, there is a contradiction between the approach taken in child protection proceedings which, often, transmit a bold message, 'Do not go near this man, do not have any contact with him', and private law proceedings where contact is encouraged and the individual is getting a different message from maybe a judge in the same court building at a different time.

Further, in this context, it may be that the family system needs to make sure that we keep up to pace with the criminal justice system. I did not know, I put my hands up, that Section 76 of the Serious Crimes Act 2015 has now made a criminal offence, and it is quite a sophisticated section, of a person who is connected with another person and who engages in 'controlling or coercive behaviour towards the other so as to have a serious effect on them'. What regard do we need to take of that in the family court?

As with some of the points I have made, I realise I am just asking questions and offering no answers, but they are nevertheless questions which, in my view, deserve to be raised.

Finally, six, Independent Reviewing Officers. In terms which are, I am afraid, equally brief, I finally wish to mention Independent Reviewing Officers. Those with a memory of over fifteen years ago will need no reminding of the Starred Care Plan case. It was the Court of Appeal's greatest moment of judicial legislation. The House of Lords sat on it and quashed it, Re S and Re W in 2002, but the idea behind it was that some elements in the care plan should be monitored and, if necessary, brought back to court if they changed, because not to do so would be a potential breach of the human rights of the child or of the family member.

That intervention of Starred Care Plans and the need for it was met, in part, by the introduction of the Independent Reviewing Officer in 2005, to act as a guardian of the care plan and, where necessary, trigger a return to court. My understanding is, and I will be corrected if I am wrong, that there have been no occasions where an IRO has brought a case back to court under the provisions.

Anecdotal accounts from around the country indicate that IROs are now rarely seen to be independent of the local authority by parents and others, and I have heard a litany of other causes of concern. This is a key aspect of the system. Once the orders are made, how they run and how fairly they run, and how they run in a way which keeps the rights of the family members in view, is crucial. It is the topic of my talk, but, in real life, this is very important and, if this key aspect of our system is indeed falling short of what is expected of it, what can be done to improve the situation?

A further concern added to the litany, is the practice, again, in some areas, of the Looked After Children Reviews (LAC Reviews) being held by the Independent Reviewing Officer in the foster home, so that it is thought not appropriate for the parents to attend.

I could go on. I could have another six points that my various correspondents handed to me to share with you tonight, but I hope it is enough to show that there is no room for complacency in terms of how the system is ticking on.

Now to the three reasons which I hesitated and did not sit down as you all wish now I had done, fifteen minutes or so ago.

The first ‘but’ is this. But is adoption still the best option? A system which has adoption against the wishes of the natural family as an outcome, which is regularly chosen as best meeting the lifelong welfare needs of young individuals, must have some confidence that that model of adoption is indeed normally in the best interests of those individuals who cannot safely be returned to their parents during their childhood.

My general thesis that the current balance between child protection and human rights is largely sound is, in fact, only tenable, if adoption is indeed the most beneficial arrangement for young children for whom it is chosen. My question, in short terms is, 'But is it?' If adoption was once the best outcome for children in these cases, does that continue to be the case today?

Before proceeding further, I need to make it clear that this is a genuine question asked by me, it is not an indication that I, either as an individual or as a judge, have any concluded view one way or the other. It is, however, a question that I do think should be asked. Adoption has changed in a number of important respects over the past two decades and a number of the characteristics of adoption, and the assumptions upon which it hitherto has been based, have shifted.

I then, in the text, give a short plotted history of adoption. It started as a statutory facility in 2006. The Houghton Report in 1972 brought child protection into the purview of adoption, but in 1968, for example, only ten percent, or less than ten percent, of adopted children came from the care system. Then it moved further forward with 'The children who wait', seminal work of Rowe and Lambert in the 1970s. So, the age at which children are now being considered as candidates for adoption has gradually risen over the years.

Once an adoption order is made, both the law and practice, at that time and still, goes to great lengths to achieve a total separation between the child and his or her natural family. In those earlier days, whilst the possibility of tracing the natural family once the individual became an adult existed, the reality was that many years, if not a whole lifetime, would go by without any reconnection between the adopted person and their natural family.

More recently, social work practice, spurred on by consistent impetus from the highest level, for example the initiatives of the Blair Government in 2001 and the coalition in 2011 to increase the number of adoptions, has led to the age of children who may be considered candidates for adoption again rising. Quite regularly, we see cases before the court where the youngsters involved are aged five, six, seven or older. Currently, twenty percent of actual adoptions are for children over the age of four.

The older a child is when he or she moves to an adoptive home, the more knowledge and understanding they will have about their life to date and the individuals that make up their family. Where that family has been dysfunctional, abusive, dangerous, the more that young individual will have suffered, and the more likely it is that some deep-seated long-term harm will have been caused to their psychological make up and personality.

No matter how strong, skilled and loving the placement in the adoptive home may become, it must remain likely that the consequences of that earlier experience will be played out in the life of the youngster as they come to terms with their own sense of identity as they traverse the choppy waters of adolescence in the adoptive home.

The difficulties facing adopters and adopted children in this regard have been made significantly more difficult in recent years with the ever increasing facility to trace and make contact with, often in an uncontrolled way,

individuals over the internet or via social media. Dame Eleanor King addressed this topic in detail when giving the Hershman/Levy Memorial Lecture in June 2013 (I give the reference to that). The challenges that she identified four years ago have certainly not diminished and they are likely to increase and become yet more sophisticated as the irreversible march of technological developments continues.

I have recently become aware and made contact with an organisation called POTATO. That stands for the Parents of Traumatised Adopted Teens Organisation. The stories of these adoptive parents are of the difficulties that they have encountered in this technologically advanced time in coping with teenagers who have been traumatised by their earlier experience. Their stories are, to me, striking. They give an account of only having received partial or inadequate information as to the harm suffered by the young person prior to placement. They talk of a lack of therapeutic support in the early months and years of the placement, and when later the problems erupt during teenage years, the adopters typically feel viewed by social services in the same light as 'failing parents' in ordinary care proceedings. Not infrequently, where there is a crisis, social services have resorted to accommodating the young person under Section 20 of the Children Act.

It must be stressed that the POTATO parents are but one, relatively small, group. Whether their experience is typical of adopters in general, I do not know. There will, no doubt, be adoptions that have run very smoothly without any difficulties or need for intervention in teenage years. Additionally, even if the adoptive placement has been troubled, that does not mean that some other form of placement would have been better or more effective for the child.

Looked at from another angle, if adoptive families are now being used to provide therapeutic intervention to help these children get over what has happened to them, then surely this should be more fully recognised in terms of (a) the recruitment and training and briefing of adopters, so they know what they are signing up for; (b) the provision of support for them, including the use of child and adolescent mental health services at the time of placement (c) long-term support into the teenage years and beyond so they are not left with a ticking time bomb.

It is, I believe, easy for professionals and courts who are dealing with children, understandably, to focus on the need to protect the child while he or she is a child. The welfare provision in the Adoption and Children Act, section one, requires primary consideration to be given to the welfare of the child ‘throughout his life’. Whilst the determinations made by courts in these cases must necessarily look to provide a safe place and good enough care for the child day by day during their childhood, the task in hand is actually bringing up an adult at the end of the process. A major justification for adoption has always been said to be, and rightly so, that the additional lifelong commitment made by adopters is likely to provide a child with the most secure and stable base for their development throughout their childhood and beyond. Our approach in the case law continues to be on the basis that this is so.

There has been, however, a radical change in a number of the fundamental elements of our model and I have listed them. The characteristics of the young people who are candidates, the degree of support, or lack of it, that

is afforded, and the erosion in the hitherto impermeable seal around the adoptive placement created by social media. These changes are, in my view, sufficient to raise the question of whether our model of adoption continues to be as valuable to each of the individuals concerned as we have hitherto assumed it to be.

This discussion takes place in the light, also, of our growing knowledge in this country, assisted by academic research, particularly by Dr Claire Fenton-Glynn, to the effect that what we do, in deploying adoption contrary to the wishes of the family in child protection cases is rare across the world. Again, it does not mean that we are right or wrong, or they are right or we are wrong, but the fact that we are different ought to give us cause for question.

I know that consideration is being given in some circles to arrangements that might fall short of adoption, yet provide a young person with a sufficient base during childhood, whilst maintaining a bridge with the natural family. Long-term foster care which has, as part of its plan, a phased rehabilitation later on in the child's minority to a member of the natural family, need not be the parents, someone in the family, may be one idea. Another idea is something called 'lifelong links' for a young person who cannot go and live with someone in the natural family, but who can be put properly in touch with a safe, maybe again, a distant, person, in the natural family, but someone connected with him or her in late teens, to develop a relationship, a bond, a bridge, to take them on into adulthood.

Data and research on whether or not our model of forced adoption in child protection cases has indeed met the needs of individuals on, and indeed well on, in to adult life, I do not think is readily available. In any event, because these changes that I have described are fairly recent, any data that looked to people adopted thirty or forty years ago is unlikely to be helpful.

Data that is available on adoption 'break down' is also unlikely to be of great assistance. I do not think it will cover may of the cases that I have heard about. My understanding is that the concept of ‘break down’ in this context is given a narrow meaning. For example, in cases such as those involving some of the POTATO families, where the young person is received into Section 20 accommodation, that would not be regarded as an adoption break down. If the adoptive parents split up and divorce, but the child remains with one or other, that is not a break down, even if the impact of the young person's presence in the family may have been a considerable cause of the stress in the relationship.

Having posed the question as to whether adoption is the best arrangement for these older children who have experienced the adverse impact of dysfunctional life and abuse, I am entirely clear it is not for me, or indeed for judges and lawyers in general, to provide an answer. If, however, the question is a valid one, it can only be answered by substantial research by suitably qualified experts. Such research is, in my view at least, sorely needed.

Two, ‘But how do we know that it is worked out all right?’ The second ‘but’ is related to the first. Magistrates and judges up and down the country on every day of the week are making these highly intrusive draconian orders, removing children permanently from their natural families, on the basis that to do so is better for the child and that ‘nothing else will do’. But, I ask rhetorically, how do we now that that is so?

Family judges receive absolutely no feedback on the outcome of the decisions that they make. Feedback only comes, if it does, on a haphazard basis because the case may come back to court on a later date. There is no regular system of keeping the judge informed of the progress of events, six months, a year, five years, ten years down the line. I do not anticipate any judge who made an order that resulted in the adoption of one of the POTATO family cases has been told, if there are difficulties, that there have been difficulties down the line.

Even when the adoptive placement breaks down, the judge is not informed. My understanding is that when there is a break down there is a formal social services review. Judges are not invited to that, and nor should they be; it would not be appropriate. But, it would not take much and it would be very helpful and important for the judge to be given a copy of the report, simply to learn as to what happened.

Fifteen or so years ago, the Lord Chancellor’s Department recruited a consultant from business to look at the family justice system, and one of the observations that he made was that the system was paying highly qualified individuals a decent salary, he said a very high salary, and you would think it too, to the judges to make decisions. Top decision makers making decisions. Yet, the system did not give them any information as to whether the decision had been one that worked out right or not, absolutely no feed back, and he said this would be completely unheard of in the commercial setting.

To my mind, it is as if you are learning to play darts and you are told you have got to hit the bullseye but you have got to keep your back to the dartboard and not look over your shoulder and no-one even tells you whether you are even hitting the board, let alone the wall or the bullseye or anyone else in the room. The judge is firing off the arrows day after day but no-one tells the judge whether he or she is hitting the target.

My first two ‘buts’ are related. Without sound, wide-ranging research as to outcomes, and without detailed, individual feedback as to the progress of particular cases, it is difficult, indeed, it is logically impossible, for judges to have confidence that the current balance between child protection and human rights which favours the massive erosion of the right to family life because it is necessary to do so, is indeed, right, is indeed, justified.

Finally, my third ‘but’, transparency. The need to shine a light on what we do. That is a catch all title. As soon as I mention transparency, you will all assume I am going to talk about letting the press and the public into the family courts. I am not going to do that. That is an important topic. I am on record as being basically in favour of it, and have been for some years. But equally, others, whose views I respect, have the contrary view. The President is about to receive the fruits of a number of consultative exercises and he will take stock of matters, so I am

deliberately not going to talk about that tonight. But, it does give us the opportunity in a minute or two to look at other aspects of transparency and see that as a wider term.

Whilst the observations I am going to make are my own, I was greatly assisted by an extended conversation with Lucy Reed and Sara Phillimore, who are two of the driving forces behind the Transparency Project, which a number of you will have heard of, which is a good source of information about these matters.

Transparency is, in my view, much more than simply thinking of allowing some passive public scrutiny of our processes and outcomes. Those of us in the system need to be proactive in shining a light on our work, both in general and, if necessary, on particular cases, so as to generate a far greater understanding amongst the public of what actually lies behind the important decisions that we are taking about children in the courts, on their behalf, as an arm of the state.

Delivering effective change in this regard is likely to require innovative thinking outside the box. Positive steps are necessary to engage the mainstream media to carry material and to have a neutral account of our system, possibly backed up by video contact which is simply available to people on the web.

Before descending into detail, it is helpful to step back and take a wide view. It seems to me there is little point in having a child protection/family justice system which affords proper respect to the human rights of children and family, if the individuals whose rights are to be respected, do not know of them, or do not understand how they can achieve access to them through the justice system in a way that permits them to benefit. Respect for human rights is only likely to be as effective as the ability of the individual to be involved and engage in the process, and thereby gain access to those rights.

Parents who are drawn into child protection proceedings for the first time are unlikely to understand all of the processes that are going to be deployed, as they will see it, against them. Ignorance of the system, both in general terms and with respect to detailed provisions, must massively erode the ability of an individual to take part in any pre-proceedings process and in the court process in a way which maximises their potential to have their rights respected and their case heard. The worse we are at explaining what is involved, particularly at the pre-proceedings stage, the less a parent is likely to be able to engage effectively in the process.

That this is so, is in part due to a general level of ignorance and misunderstanding in the public. I do not say that critically of the public, it is the way it is, and part of my pitch is that that is partly our fault. It is part of a wider point about public education of the justice system in general. The Family Court is even worse off because we are seen as the secret family justice system to which there is no public access.

Unfortunately, this vacuum of information, created by the lack of sound and accurate material about the system, provides a space into which ill-informed and, at times deliberately incorrect, commentary and advice can be introduced. Regular ill-informed and deliberately partial press commentary must have an impact on the public at

large, but targeted so-called advice by some semi-professional McKenzie Friends or other lay organisations to vulnerable individuals who find themselves the subject of care proceedings, has the effect in some cases of moving those individuals directly away from engaging effectively in the court process and achieving access to the system, which I believe would respect their rights to a fair process and family life, were they to engage.

In a system which, in current times, puts priority on parents being able to accept that their parenting may have fallen short, display insight into what needs to be done and a willingness to cooperate, this advice as I am describing it, cuts entirely across the parent's potential to do so, particularly if that advice, in extreme forms, encourages them to flee from the country to Ireland or France or further afield.

From what I have been told from a range of sources and from my own exposure on a daily basis to litigants in person seeking permission to appeal, there is a significant and growing distrust shown by some parents for child care lawyers and for judges. It is deeply worrying that this is so, and it needs to be addressed if it is not to lead to yet more parents disengaging from the process and damaging their interests, and completely cutting across the balance which I so rosily painted to you at the beginning of this talk.

I could go on, but the point is plain. To achieve the benefit of respect for human rights, it is necessary to engage in the process within which the rights are embedded. To do the contrary, either through ignorance or as a result of targeted advice, fundamentally compromises the ability of the system to deliver in that respect and is likely to reduce the parents' prospects of having an outcome which they see as favourable at the end of the day.

What can we do about it? Well, again, I am asking the questions and not giving solutions. However, raising the level of public education and awareness is one option, through the web, through pretty low key interventions, and secondly, ensuring that parents are exposed to accurate and sound legal advice at the earlier stage, including pre-proceedings activity and perhaps formal social work assessments, is important.

In an ideal world, pre-proceedings legal advice would be available, but this is not an ideal world and we have to contemplate some other way forward. The Transparency Project website, for example, contains a number of accessible explanations about the law and procedures aimed at the non-lawyer under the general title 'Children Law for Dummies'. It is very good; it is very easy reading.

The Bristol Family Court has established something called the Family Court Information website. It is aimed at families who find themselves involved in proceedings. It gives straightforward, down-to-earth descriptions of the process, together with links to videos that people can watch, or other material downloadable from elsewhere, for example the Family Rights Group website. It is an excellent resource and if social workers were required, as soon as they were making some formal intervention in a family, to refer them to the local website with that sort of material and links to local resources, then something of the gap that I am describing between ignorance and knowledge might be bridged, even if full legal representation cannot be provided. The cost of setting up the

Bristol website was £1,000 and it would be £1,000 for each court centre. I cannot understand why that resource has not been replicated at each of the other forty or so family hearing centres up and down the country.

Another angle of approach to the same problem is demonstrated by regular, almost daily, blogs or articles which appear on the Transparency Project website and elsewhere, with individual bloggers such as PinkTape, SecretBarrister and SuesspiciousMinds. He is very funny as well as accurate. Such articles may take a general point of public interest, which they do, or they may pick on a case that has been in the news that day, and offer a lawyer's view of what lies behind it; what the law is and what the story means, particularly if there is access to the judgment, they typically give a link to it. I do not know how many people in the public would follow that, but that sort of model, easy, accessible information, has got to be a good thing.

However, these are small beer really, and they are not enough to open up our system, whether it let people into the courtroom or not, to greater public knowledge and scrutiny. There is a responsibility on all of us, I think, to do something about it ourselves, rather than leaving the heavy lifting to a handful of volunteer, well-motivated commentators, whose output may or may not be picked up by others in the system. It involves extra work beyond the day job. It involved judges, perhaps, giving a summary of their judgment that can be published in the local press. That all takes time. To make a summary of a judgment often takes longer than producing the judgment itself.

However, we do need to do more to shine a light on what we do. Simply sitting back and allowing the public to have this highly negative view, which I think some of them do, of what we do but more particularly for the families who come from a standing start into our proceedings and hear that they are going to finish in 26 weeks and their children may be removed from them - the more we can do to give them accessible information in an understandable form at the earliest point, the better.

Conclusion, you will be glad to know. Who holds the risk? How risk is assessed, and how brave or risk adverse those who make decisions for children at risk of significant harm may be, are clearly central issues in every single child protection case.

Increasingly, it seems that for a range of understandable reasons, social workers are passing the decision-making to the courts and it is the judges and the magistrates who are being called upon to determine whether the children should remain with their families or be placed elsewhere. The increased case load comes not from high-end gross abuse cases with serious physical injury or sexual abuse. Those have always been in the courts. The new cases tend to be those involving long-term neglect as a result of inadequate parenting, or other slow burning, but nonetheless harmful, family dysfunction leading to emotional harm.

As I have explained, I consider that our system of investigating child abuse, protecting children, and affording respect to the value of family life, is one that has many excellent qualities, and one which is likely to strike the balance of risk correctly in most cases. It is right to stress that the outcome for children who cannot safely live

with their parents must always be to achieve security and permanence in another home throughout their childhood. The question is, how best can this be achieved in a particular case?

The hesitation that I have expressed in this lecture is born from an awareness that, in various ways and at an increasing pace, the world is changing, in terms of the characteristics of some of the young people who are chosen for adoption, the range of problems that they may exhibit in years to come and the ability of those who are adopted and their families to trace each other and to keep in touch via technology; also, the need for support for adopters in dealing with the fall out from those problems often years down the line.

For thirty years and more, since the move to adopt children from care took off, the courts have accepted and worked on the principle that adoption with little or no contact with the natural family, provides the best option for upbringing of a child who cannot be cared for in her family for her childhood and beyond. The stability and security provided by adoption is said to provide a quality of care which far outstrips any other model that might be available.

The change in the adoption landscape that I have described, now leads me to question whether that still remains the case for some, at least, of the children for whom we have hitherto taken it as a given. A future which may include reception into Section 20 accommodation, or even care, placement break down, relationship break down, unstructured and possibly unknown contact with the natural family, upset and confusion, seems a far cry from the sunny upland of a happy, settled, secure future with a forever family that has been the traditional goal of those making adoption orders to date. If I am right in raising this question, it cannot be answered by lawyers and judges, it can only be assessed by research, as I have indicated.

Judges and magistrates are asked to make these decisions by choosing which outcome is best when measured against the individual's whole lifetime. Whilst these are decisions taken in child protection proceedings, they are not just to do with child protection. Indeed, I would say the adoption decision is not even largely to do with child protection. Making an adoption order radically shifts the tectonic plates of an individual's legal identity, and of others, for life. This is a very big thing to do in order to protect the individual from harm during their formative years. Is an order of that magnitude necessary? How do we know that it is indeed the best outcome for the young person whose future life is being decided by the court? And if I am right that we can no longer be certain that it is, how is it possible to say that, by making an adoption order, particularly in the middle and low range of abuse cases, we are indeed getting this balance right between child protection and the right to family life. Thank you.

THE RT HON SIR JAMES MUNBY:

Well, that has given us all an awful lot of food for thought. We are going to move on to the next phase which is a panel discussion and which in turn will lead on to a general discussion and Q and A session.

Now, the panel probably needs very little introduction, Cathy Ashley, who has already spoken; I suspect you know who I am; Elizabeth Isaacs is a well-known family silk, previously a social worker, so she is multi-disciplined as well as multi-talented; she is a member of the Family Justice Council. Anthony Douglas is and has for many years been the enormously successful Chief Executive of Cafcass and has totally transformed the organisation which those of us who are old enough to remember its disastrous introduction in 2001, will have at the time thought it impossible, and last but not least we have Dr Shazia Choudhry who is a very distinguished academic, Reader in Law at Queen Mary, Academic Fellow of the Inner Temple, with research interests lying in the intersection between European and United Kingdom human rights law and family substantive law.

Now, what I am going to do is to ask each of them, and I will spare Andrew the task of explaining in two minutes what he has just been telling us, I am going to ask each member of the panel to give us two minutes, and no more than two minutes please, of initial thought, initial reaction and we will then break into a fifteen minute or so discussion amongst the panel.

So, Cathy, can I ask you first?

CATHY ASHLEY:

Actually, do you want to go? I am still absorbing.

SHAZIA CHOUDHRY:

I am happy to start. I thought it was fantastic. I just want to say thank you, very much, for that. My comments are basically going to be to highlight the benefits of a rights-based approach which might deal with some of the issues that were raised in the speech. First of all, that rights-based arguments can provide a counter balance to what I have termed 'the emotional pull of welfarism' in this context, which can sometimes lead the prevalence of an overly paternalistic approach, either from the courts or indeed from local authorities, as we have seen rather disastrously, in terms of Cleveland, for example.

Secondly, viewing the issue of protection from abuse as part of an obligation to protect children's fundamental human rights rather than a question of what social services need to do to promote the welfare of children, puts greater emphasis on the responsibilities of the state. I think this is quite key. If we emphasise children's rights to protection, then it also means that duties can be imposed on member states, in this case obviously the UK, to provide, for example, adequate local authority funding, the duty to maintain family ties and to commit resources to enable that to happen and also, arguably, the duty to provide information to prospective carers of children in care.

Then lastly, I just want to use that phrase that always comes out when we talk about human rights, ‘proportionality’, which I think we do rather well at, actually, in the UK, in terms of getting that balance right. But, I think proportionality also provides us with an opportunity for a bit of transparency. What I mean by that is, if we

employ a rights-based approach, we have to acknowledge the rights and interests of all the individuals involved, not just the child, and then go on to justify the interference with any of the rights that have been raised or claimed. That, in itself, provides an opportunity for courts, I think, when they use rights-based reasoning to explain to parents, to family members, 'we do acknowledge your rights and interests, though we are going to interfere with them for this reason'.

I think that might go some way to deal with the very often refrain that we hear from parents or members of families who are involved in court proceedings, that they just do not understand and their rights were completely ignored and they did not have a clue what was going on. So, I think for me, the benefits of a rights-based approach would go some way to dealing with some of the issues that you raised.

ANTHONY DOUGLAS:

Yes, I just wanted to say a point about Bridget which, to add to Cathy's which was, having known her decades, that she helped me. I mean, she once told me just to get on with it. That was very much Bridget. But, for many professionals in our sector, she was just simply 'Bridget'. It is quite hard to be known by your first name and for that to be universally understood, and 'phone Bridget' was often what people did, and the quality of the advice was just phenomenal. So, I wanted to acknowledge that and to say how she helped me.

Just two or three points about Andrew's speech, which resonated particularly with me as an adopted person, forgetting the professional part of it. The first point is that I think we are in a time when, particularly since the Baby P case, practice has become a little bit more authoritarian, a little bit more risk adverse, with parents. It has also become more authoritative. We know more. But for children, I think the picture might be slightly better because, in that authoritarian, authoritative time, we understand more about the child impact of particularly emotional abuse and neglect. I do think that some of the family support we did was quite woolly and glossed over the experiences of children, and therefore, it is a mixed picture.

Bridget would have been, very much, part of some work that we are going to be doing in the next six to nine months between Cafcass and ADCS to try to put together a standardised evidence pack for emotional harm and neglect. These are the two areas of care that have risen dramatically. Sexual abuse and physical abuse has remained reasonably constant. I think the great increase in emotional abuse and neglect cases has been through that greater understanding of the impact on children, particularly of long-term neglect. I think she would have been pleased to be part of that work. I shall miss her not being part of it.

Then, in terms of adoption, I very much support what Andrew said and I was thinking about what I would have liked to have been called rather than an ‘adopted child’ because that never quite worked, I think. It never quite resonated and I am in the very fortunate position of knowing my adoptive parents, birth parents, endless brothers and sisters, all those things.

But, I do think that it should have probably stayed a bit closer to an emphasis on permanence but not the legal status, and that also made me think of special guardianship because why should a relative be special or a guardian be special, compared to a foster carer or anybody else? So, I am not quite sure we have got the names right. I think the law and policy are lagging behind social trends. I think Andrew is absolutely right that you make a legal order, whatever it is, in private or public law, it might well be out of date in two or three years. It might have well been excellent at the time, but people's lives change.

We have children coming back to us saying, 'You stopped me seeing my father, five or six years ago, because you thought he was dangerous, well, I could handle him then, I could handle him now'. Now, maybe, a child who is looking back with excessive optimism and did not understand the risks he was facing, but I am not sure we have got a system that copes with the way lives change so quickly.

So, certainly for me, the binary opposition between being adopted and my birth parents is now not the right model for it at all. The closest I could get to it would probably be a permanence order with something that still calls mums and dads, 'mums and dads'. That is what they were. You can have two mums and dads, lots of children do now. It is not a weird thing any more, it was then. And also brothers and sisters, I have lots of half brothers and half sisters, but I do not think of them as half. They are just brothers and sisters.

So, I think Sir Andrew's point about a radical revisiting of the law around this and the policy to recognise we are in 2017 and not 1957 or 67 would be welcome. It would be extraordinarily difficult, of course, adoption is tied up with law, inheritance and it is an extremely complex matter so certainly a matter for the Law Commission for extensive research. I agree one hundred percent with Andrew that we need to rebalance it.

ELIZABETH ISAACS QC:

Well, I endorse everything that has been said, first of all, in relation to Bridget. My fondest memory of working with Bridget was a few years ago when we were organising a fund-raising dinner and her excitedly getting dressed in the loo at Lincoln's Inn getting into her glad rags. She was a complete ball of energy as well as everything that Cathy has said, so I endorse that whole-heartedly and I feel very honoured to be asked to speak at anything in her name.

In relation to Sir Andrew's speech, I was so excited when I read it. I think it is absolutely about time that we revisit the concept of adoption, one hundred years after the 1926 Act, and I would also endorse what Anthony has said about it tying in with a whole modern family agenda. Families do not look any longer like they did in 1926. Is adoption as a legal and social concept now fit for purpose? I do not know, but I think Sir Andrew has raised some really pertinent questions and I think that is a really exciting prospect for the future.

Just three short things, I hope, to say. Firstly, Sir Andrew talked about the shift particularly after the Baby P case towards courts and the judiciary and away from social workers as decision makers. Completely unsurprising, and

I think those of us involved in the social care field knew that that was going to happen entirely predictable. Until we re-empower social workers, re-professionalise them, bring social work training back into universities and treat social work as a proper evidence-based profession that is not going to change. So, I would whole-heartedly endorse a move back to the academic training and professional standing of social work as a discipline.

Secondly, we do have some solutions already. We have Family Group Conferences which Bridget and the Family Rights Group were absolutely pivotal in bringing across to the UK from New Zealand, and that model has been around for nearly twenty years. The whole essence of the Family Group Conference model is about solutions lying within families themselves, and if resources are made available and Family Group Conference convenors are properly trained and made available throughout the country, as indeed was envisaged and hoped twenty years ago but has not happened, then I think we might be on the road to bringing about some of the changes that Sir Andrew has referred to.

Thirdly, Sir Andrew mentioned resources, and of course that is the elephant in the room. But, in a climate where in the last five years we have seen, money and resources being consistently and continually taken away from early intervention services, and from Sure Start and from family centres and placed wholly behind the adoption agenda, for all sorts of reasons, then we are not going to be able to make changes. So, I think anything that is about focusing on early intervention and preventative work and moving away from the end of the process and looking at the beginning of the process has only got to be a good thing. But, I am very very excited by what Sir Andrew has said and I think it means that we can look forward to a different and a changing agenda.

CATHY ASHLEY:

Well, first of all, thank you so much for the speech. I got a preview copy last night and as I was reading it I was sort of cheering at each point that Sir Andrew was making. It completely fits in with discussions that Bridget and I had had at different points, and I know her family were all nodding, so I know that she had obviously had those discussions over the kitchen table, in relation to some of the many challenges that we currently face.

I just wanted to touch on three things very quickly. One is around this issue of how the care system too often breaks relationships, particularly in relation to siblings. So fifty percent of sibling groups are split up when they enter the care system. We know that the chances of children in care having contact with other siblings significantly reduces the longer the child is in the care system.

So, my view is that, both in relation to adoption and in relation to how we manage our care system, that far too little emphasis is placed on valuing relationships and that particularly in relation to sibling relationships, but not exclusively. One of the areas that Family Rights Group has been working on, and is going to continuing working on, is the idea of Lifelong Links. This is about the children who cannot return home or live with their families, to use the Family Group Conference model with an extensive search dimension to work out who can provide a

lasting support network for the child. It may be teachers that they have worked with, it may be a form of foster carer, but also it will be relatives for whom they may never have yet met.

Edinburgh has been testing this and so have a couple of other local authorities on a very small scale, and talking to some of the young people, it is transformative. In Edinburgh, they were told in some cases by social workers that the children absolutely do not have any family that they can have any relationship with. "We know these children, we know their mothers were in the care system, their grandparents were in the care system". Yet they have found a great uncle who it turned out was actually a foster carer. They found some relatives who work in Edinburgh Children's Services, in fact, one who even worked in the Family Group Conference service for Edinburgh. Just like our families, sometimes things go right and sometimes things go wrong and we fail to use the family enough as a resource.

So, turning to the point that Sir Andrew was talking about in relation to adoption, I have never understood why it is that we allow adults, as in adoptive parents, to set the terms in relation to those children's relationships with their network and who might be of value to them. If we are a child welfare system then it is the child's welfare and the child's voice that should be central, regardless of the legal arrangement.

Then just one last point about the transparency agenda which I am again really pleased that was raised. We have a lot of people who phone our advice service who indeed are incredibly fearful about what may happen to them. That term about cooperation, that is often now used, 'is the family cooperating or not?' and it is often the trigger; failure to cooperate that leads to the family ending up with the child subject to care proceedings. I think that we need to re-examine this idea of 'failure to cooperate' because often, the parents whose children are subject to care proceedings have themselves been in the care system. If you look at Broadhurst's research, a quarter of mothers whose children are subject to care proceedings, return to care proceedings about another child, but that increases to a third for those mothers who are teenagers at the first set of proceedings. So, they themselves are barely but children and they have often had a poor experience of how the state has worked with them or not worked with them. So, when we then judge them for failure to cooperate, we have got to take into account that often it was those parents who were asking at different times, maybe in childhood as well as in parenthood, for help, and they did not get it, then suddenly they are being judged for not playing by the rules that are suddenly being set. So, I think we really need to re-examine how we use and judge people in relation to cooperation.

THE RT HON SIR JAMES MUNBY:

Can I just make a couple of points before we throw it over for more general discussion? First, I had tremendous ambitions and tremendous expectations of the importance, not really of this lecture series, but of the very first lecture, and Andrew, if I may I say so, has more than lived up to my hopes and expectations. He set us off on a wonderful course and the lecturers who, in succeeding years will follow him, will have a very difficult task.

It is not my function, I probably will not be here any longer, but in ten years' time, when the tenth anniversary lecture is held, it might be interesting for that lecturer to revisit the first lecture and to see to what extent Andrew's prescient thinking has actually become reality. I suspect in ten years' time a lot of what he is saying, which may sound very radical today, will become accepted mainstream thinking.

That leads me onto the second point. We have had adoption as a legal structure in this country for a few months over ninety years because I think it came into force on 1 January 1927. Ninety years. If I make an adoption order today, in relation to a baby, that baby may very well live for over ninety years. So, we are making adoption orders today for children who will live longer than our entire experience of adoption in this country. That is not just a cheap mathematical point, look back to adoption as it was practised thirty years ago. We hardly recognise it in terms of current thinking, let alone fifty years or seventy years ago.

Obviously, we can only do at any given time the best we can, in the light of best contemporaneous thinking, which of course has got to be multi-disciplinary. The lawyers do not have the complete wisdom. The social workers do not have monopoly of wisdom but, the only certainty I have about the future of adoption in this country is that, in thirty or forty years' time, people will be little short of astonished at what we are doing today, and that in ninety years' time, it will be completely transformed.

Now, that is not a call for permanent revolution. It is a call for humility on the part of all of us that just because we think we have got the answer right today, just because we are convinced that our system today is better than the system of thirty or forty years ago, we must recognise, we must constantly challenge it, constantly keep it under review, in the sure expectation that as the years move by, and I suspect as with most of these things, the pace of change is constantly accelerating, what it seems today to be self evident of the best practice, the right practice will have a very different tone and tinge to it in thirty years' time.

After all, one is not talking about the long distant pre-war world. The J enquiry is about to start investigating the, putting it bluntly, the export of our surplus unwanted population to the colonies, to the empires that were still seen in the 1950s and the 1960s, and that is now increasingly seen to be a shameful episode in our history, as in the history of the colonies, the places like Australia, Canada which took the children. I only make the point in the one sense, the 1950s are a very long time ago. The 1960s are a very long time ago. They only seem a long time ago, not so much because they are fifty or sixty years ago, but because of the enormous rate of change.

We have got to recognise that that may happen in future and Andrew has been very prescient, and dare I say it, almost given the present culture in these matters, very brave in asking questions which in some quarters I suspect are thought to be beyond proper asking in respectable professional company.

Now, we have got to the point where it is very important that you have your say. Questions, comments, observations? If you put your hand up, there will be a microphone.

GRAHAM MOCHETT:

Thank you. My name is Graham Mochett, I am a legal team manager at West London Family Court. On a slightly different topic, but still child protection and rights of the family, I have written it down so I will try and get it right. The local authority's application for an interim care order at a first hearing is a very important hearing and can be quite determinative depending on whether the child is removed from the parent or not. The rules allow a parent three days to prepare for this very important hearing, yet it is very common and, in fact, experience has shown that the majority of these hearings are dealt with on an abridged notice and squeezed into an already busy list for judges and magistrates and often given an hour hearing slot. A not uncommon example is a mother giving birth on day one, the local authority wanting an abridged notice removal hearing on day two, because the hospital states they are ready to discharge mother and baby, giving next to no time for the mother to prepare for this significant hearing.

It seems it is a case that the local authority, as you mentioned earlier, are transferring the risk of child protection to the court. These urgent ICO hearings are arguably almost in breach of Article 6 and 8 rights and adversely affect full lists. I would welcome your views as to whether there is a better way in which the local authority and the court could deal with these hearings.

THE RT HON SIR JAMES MUNBY:

Well, shall I pitch in on that? Let us take the easy case, the newborn baby. Sometimes, though rarely, the first the local authority knows about the newborn baby is when a previously unknown mother presents in labour at the hospital. That I suspect is a rare situation.

In the vast bulk of such cases, the mother and the baby, yet to be born, had been known to the local authority for weeks and months and months, and I am sorry to put it bluntly, it is a failure of planning, it is a failure of pre-proceedings work for that case to come to court in disorder on the afternoon, often the Friday afternoon when the hospital says you are out this afternoon. Babies are unpredictable things; they can be ten days late or ten days early. But, why in such cases can the local authority not notify the court? 'We have got baby X whose expected date, time of arrival is this. Please open a dummy file'. If the plan is for that child to be removed, then for goodness sake, why are you not going to court the moment the child is born, rather than waiting five days until 4 o'clock on a Friday afternoon when the hospital says you will go? That is one end of the problem.

I think the other end of the problem is the courts have got to be much more willing, these are emergency applications, if they are emergencies, which have got to be given proper time. It is not good saying we are going to squeeze this in for half an hour in the middle of a busy list. If there are real emergencies where the issue is removal, in a context where, as we all know, removal at that stage may go a long way to pre-determining the outcome, some other case has got to be pulled so that everybody has proper time to deal with.

I think, also, people need to be much more questioning, something I have railed against for years, there are two questions; does the local authority need ICO? Does the local authority need to remove? They are two completely separate questions and very often they are aligned into one question and the answer to 'do we need an ICO', often yes, so we have got some kind of legal control, some legal mechanism, is simply treated as being 'and we need to remove'.

So, I think these are, in may ways, process issues, they are fundamental issues. I think you are entirely right to say that too often the process is not article 6 compliant or barely article 6 compliant, and the practical message surely has got to be much better. Much closer relations between the local authority and the court. Tipping the court off that sometime later this week there may be an emergency application, it makes all the difference. I mean, it sounds very silly and very odd, but as somebody who has been both a barrister and judge, it can make all the difference in the world to ringing up the court at 9.30am and saying we may be making an application this afternoon at 2.30pm or 3 o'clock and not making the telephone call until 3.30pm. So, I do feel strongly about it. There is too much of this going on. We all know the Friday afternoon, 4.30pm application from the ICO, and most of us associate it with the Friday before a long Bank Holiday weekend. It should not happen. Anthony, from your perspective?

ANTHONY DOUGLAS:

Well, I think just to add to that, there is a particular issue in West London and London. Over fifty-five percent of cases are short notice, if you define that by all involved, the parents and others involved, as having less than three days. So, it is a serious issue. We have got a conference, multi-disciplinary, in West London that Judge Rowe and myself are convening for May 26th with the seven local authorities, court staff, Cafcass, guardians and so on, to try to look if there is a specific pre-proceedings programme that might help with this because, as the President says, all but a handful of cases are known prior to issue.

We know that between us we could probably do better than that, but it is a multiple complex problem, listing is a problem, the assembly of the information is a problem, the communication with the parties is a problem, so it is a multi-part problem. Possibly not helped by the… because we want to get cracking on the cases and not get subject to delay, we have probably gone too far the other way. But, as you say, if removal is an immediate issue, you have got to make a decision. Once a case is issued, a court cannot sit on it. You are quite right, so do come on 26th May. I think it is going to be at the Hilton in Ealing. That sounds more upmarket than it actually is. Hosted by Hounslow.

THE RT HON SIR JAMES MUNBY:

Can I just add, there is actually a very much bigger question which lurks behind this. To what extent can Cafcass as a matter of law, to what extent should Cafcass as a matter of practice, be involved in the pre-proceedings

phase, particularly in this kind of case where we know there are going to be proceedings once a child is born. And a similar question, to what extent can the courts be involved in the pre-proceedings phase?

Now, I am in favour of pre-proceedings involvement both by Cafcass and by the courts in appropriate circumstances, and the entirely predictable application for an as yet unborn baby is a classical example of that. There are big cultural issues here, there are big legal issues here. Most people find it a very odd proposition that a judge should be involved either in a specific case or generally in the pre-proceedings phase, but the idea that there is pre-proceedings and then proceedings, and there is a watertight bulk head between the two, does not help and it leads to these problems, and I do wonder whether, moving forward, we should not be thinking about a much more permeable barrier with both Cafcass and the court and the judiciary involved in the pre-proceedings phase.

ELIZABETH ISAACS QC:

Sorry, just to add to that, I do have a bit of a problem with Cafcass being involved beforehand because of independence. But, I think the bigger issue is what Sir Andrew said and also what Shazia said which is that in a rights-based legal environment, the system can only work if people know what those rights are. And that goes back to what Sir Andrew was saying about making sure the public is properly equipped with knowledge about what their rights are and has access to proper legal advice at the early stages. At the moment, (and solicitors in the room will tell me differently if I am wrong), my understanding is that parents do not have access to proper full legal advice, for example a child protection conference that takes place pre-proceedings. They might get a solicitor going along as an observer, but there is no access to advice. And that has got to change if we want parents to have an even playing field from the outset. So, I think it is got to be looked at from all corners.

THE RT HON SIR JAMES MUNBY:

Can I just endorse that? As I understand it, correct me if I am wrong, there is no legal aid until the proceedings start. The proceedings cannot start until the child is born, therefore no legal aid. Pre-proceedings, there is what used to be called Green Form, it is called something else now, Legal Help. It is a very small pot of money. It does not go very far. It is triggered if, but only if, the local authority, as I have been urging them to do for years, writes the appropriate letter. And there is a very simple point here. If we are serious about this, if we are serious in recognising the importance of the pre-proceedings phase, then those who decide when legal aid starts and does not start, have got to listen and do something.

CATHY ASHLEY:

Can I just add two points? One of which is that we know from our advice line, the number of families where actually the local authority know about this pregnant young woman and nothing happens until really late in terms of the pregnancy. Secondly, of a number of cases from our advice line where that young parent to be, both father

and mother, are led to believe that actually no action is going to be taken by the local authority, that basically that child is going to be able to come home after it is born, and then it changes. And quite often, there is no material reason, aside from the actual giving birth, that leads to that change in local authority attitude. It could be that the social work manager has shifted or whatever, but suddenly it is an about turn. So, that is one real problem.

The second is that, on our parents panel are a number of women who have been through what you have described and it is pretty inhumane - in relation to what we put new mothers through, in relation to the removal of their child at that point, and in relation to what we then force them to endure in relation to proceedings which can have a lasting impact. I just think there must be a way of doing this better and it is one of the areas at Family Rights Group we have been thinking about, in terms of there must be a more humane way of working with new mothers in that scenario.

SHAZIA CHOUDHRY:

I just wanted to add that, in terms of the European Court of Human Rights, and what we are supposed to be doing, the more serious the interference with the right, and I cannot think of anything more serious than removing a child from a parent, the more scrutiny is performed by the court. In terms of the process that is taking place, that is where, if breaches are found in relation to child protection proceedings or care proceedings, it is often in the process. It is not the decision to remove the child so much that the court is concerned with, they often leave that to the individuals and the experts involved because they are closest to the decision, but in terms of the actual process, the decision making process, and the process I have just heard about just now in terms of what the courts are doing and these issues that are really concerning.

This is pretty outrageous interference with the rights of the individual and it is very, very concerning and I think that is something to remember. And also, in terms of Article 6, we have to ensure that we have effective representation in relation to the right to fair trial, and that will involve making sure that people have access to effective legal advice and assistance, and that is clearly lacking as well in some cases.

So, it is kind of keeping almost a watch on the process from a human rights perspective too, to ensure that people are actually able to access these rights. The rights are there; it is a question of how we ensure that people get access to them.

THE RT HON SIR JAMES MUNBY:

Now, you have had your hand up. yes?

JOHN SIMMONDS:

Thank you, very much. John Simmonds, I am the Director for Policy Research and Development at Coram BAAF. I think it has been a very challenging evening with some really significant questions being asked. I suppose, at one level, I feel that there are a set of very significant political issues in some of this about the role of the state and rolling back the role of the state in terms of being supportive to families, the issues of poverty and the impact of poverty on families. That is definitely one set of issues and it is a complex set of issues. But, I think that the issues about children being removed and particularly being placed for adoption that that is coming up quite a lot at the moment as to whether that is a part of government policy.

But, I think that the other thing that I am concerned about in all of this is that Sir Andrew raised the issue about Jane Rowe's research which identified the enormous impact of drift when children came into foster care with no very clear sense of where they were going to, the likelihood of them staying in care for a long period of time if it got to six weeks, that sense of not knowing, 'are the people that I am living with the people who are going to be looking after me in two years time or five years time or twenty years time?', because that was the sense of drift in foster care.

I think we have moved very significantly to recognising one of the fundamental rights that children have is a right to a private and family life and that means that the people that care for them have to exercise parental responsibility. Not the local authority, not the independent reviewing officer, but the parents, and I think that the development of permanency and permanency planning and the part that plays adoption in that, both recognises that Article 8 right. From the child's point of view, they have a right to a private and family life, and if that cannot be provided by their own birth parents and birth family, then an alternative which actually delivers that is something that we need to seriously think about.

I am not underestimating all the challenges that are around a system actually delivering that, but I think, in many respects, that those Article 8 issues and the rights of the child and that concept that comes from the Children Act 1989 about parental responsibility, are telling us something very fundamental about human society, about how children develop, about the kind of stability of the system that children need in order to be able to develop well. I think that if we lose sight of those drivers in the system then we do so at some peril.

That is not to deny that there are not challenges in the system, and the POTATO organisation and a range of other organisations that are really recognising that, the point at which these children are placed and the baggage that they carry with them, is a major question for whether ordinary parenting and ordinary family life is sufficient to address those issues. That is why we have the Adoption Support Fund. That is why the Adoption Support Fund has been rolled out to special guardianship as well. But, I still do not know that we have got to grips with what it means for that child to settle and to developmentally recover from whatever experiences led to them being placed for adoption.

The key thing for me is that Jane Rowe did that work in the 70s and 80s to avoid this fundamental issue of drift, and adoption was one part of the solution to that, and I hope that we do not forget that that is something which has been developed and embedded into practice over the last thirty, forty years.

THE RT HON SIR JAMES MUNBY:

Andrew, would you like to?

THE RT HON SIR ANDREW MCFARLANE:

I agree. Jane Rowe's work, Rowe and Lambert, the book was called 'Children Who Wait' and they were just left, sometimes in foster care, sometimes in children's homes, with no plan, nothing, no permanence. And I think, in the closing remarks, that if a child cannot be at home, then they need permanence, security. The question is whether that needs to be adoption with the dislocation for the rest of that individual's life to achieve that, and whether that is achievable with the sort of young people I have been describing and in the modern world, is the question I am asking. I have noted particularly what Anthony has said, he was talking about permanence orders and people, kids, we all need to know where we are and who we are and so permanence, if they cannot go home, has to be the goal. But, the question is whether the model we have got is still right for as many children that we say the model is right for.

THE RT HON SIR JAMES MUNBY:

Now, I think there was somebody over there... Yes?

ANNA COMBONI:

Hello. I am Anna and I am a social worker in a child protection team in South London. I had a question for the speaker and it was about your second 'but' about the institutional reflection that the judiciary has over the decisions made, and after the decision is made, how you learn from the outcomes of those decisions. I suppose, for Children's Services, for police, for health professionals, for third sector organisations, a major way in which we reflect on the decisions is through the serious case review. I suppose it is only a particular sub-set of decisions. It is the decisions where in the end a child dies or is seriously injured and there are concerns about how agencies have worked together. It is only a sub-set that would have that form of institutional reflection, but that is something that we do and participate in, and I think the social work sector has learnt a lot from the results of serious case reviews about improving our practice.

You referred to the Ellie Butler case within your speech, and from that serious case review, the judiciary refused to participate in it, even though, arguably, the judiciary out of all the institutions involved were very significant in

determining the outcome. So, I was wondering what your views were on the judiciary's participation in serious case reviews and whether it would ever be appropriate.

THE RT HON SIR ANDREW MCFARLANE:

The point I was making was about feedback to the judiciary and I think when there HAs been a serious case review, I do not recall in my time as a judge ever being sent a copy of a serious case review in relation to a young person about whom I had made an order and things had gone wrong. My point was about feedback to the judiciary.

The question of whether judges take part in the serious case review is a different matter and it brings into consideration judicial independence and accountability, and I think there are quite strong policy reasons why it would be inappropriate for judges to sit round the table and be accountable and contribute to that process in the way that serious case reviews take place, or indeed an inquest. I think there has been an inquest into the death of Ellie Butler.

So, it is for others to decide whether judges do or do not take part. For my part, I think it would be on the wrong side of a line for a judge to take part in a serious case review, but you are right to ask the question and what I said begged that question, so I certainly respect your point of view but think I have said what I have said.

THE RT HON SIR JAMES MUNBY:

Can I just come in on this? There are different aspects of this. One is, and I have made this clear, specific in the context of that particular serious case review, there can be no objection in principle if the court service or the judges are asked for the papers, in supplying all the papers in the case to a serious case review, subject, where appropriate, to usual anonymity.

The fact is, this is a fact, we were not asked for any of the papers in that serious case review. If we had been asked, and if I had been in charge, they would have had the lot. So, the first thing is, I think there has not been, in the past, an understanding by those conducting serious case reviews that they should ask for the relevant papers and they will get them.

The second thing at the other end of the process, is obviously, once a serious case review is published, there are lessons there for the judiciary and those are lessons which we take on board and those are lessons which, if they require addressing, on a systemic basis, we will address. Therefore, serious case reviews are not simply put in the drawer and forgotten about.

The point you are focusing on is, as it were, the middle point, should the judge, to use Sir Andrew's question, be sitting around the table as part of the review. Now, the fact of the matter is, that successive presidents of the

Family Division, starting with Sir Mark Potter, followed by Sir Nicholas Wall, and followed by me, have taken the clear view that it is inappropriate for judges to be involved in that process and the reason is very important and it is important to understand it. It is all to do with judicial independence and the fundamental principle that judges do not talk about their own cases, are not called upon to justify their cases, and are not called upon to comment on or justify other judges' decisions, except in the context of an appeal to the Court of Appeal.

The moment judges start getting involved, sitting around the table, discussing a case, one is muddling up their reasons for deciding as they did, which are definitively set out in the judgment, and other things. The simple fact is, judges explain their reasoning in judgments, as far as I am concerned, they are fair game for comment and criticism, however vehement and however harshly expressed, and there is nothing to stop anybody in relation to a published judgment, saying in very blunt terms the judge was wrong, the judge is talking nonsense and so forth. But, to challenge a judgment, you go to the Court of Appeal. It has to be remembered, this is a fact, I do not know the explanation for it, I think I am right in saying there was no attempt in that particular case to challenge the particular judgment by an appeal.

Now, the constitution, I do not shrink from saying this is a constitutional point to do with the independence of the judges, the principle that you do not justify your judgment is very important because otherwise, if we once let that principle go, it is very easy to say, 'Well sure, it is a serious case review', but where does it stop? One will have a member of parliament saying 'justify this'. One will have a journalist saying 'justify this', and there will be no end to it. It is one of those things where my view, and I think I am right in saying this as it happens the view of my two immediate predecessors, is that there is an absolute line and if one crosses that absolute line then the potential implications are very serious. We will end up, this is not scaremongering, we will end up with 'so, why is the judge not prepared to come on Newsnight or Panorama or whatever, to explain what has happened?'.

But I think the important thing, and the contribution we can make, is to give over the papers if we are asked for them. I have had quite a lot of correspondence, actually, with that particular serious case review, and it is perfectly apparent that they did not have some of the papers and if they had asked for the papers, they would have had them.

ANDREW GREENSMITH:

Thank you. Andrew Greensmith, I am a District Judge on the Northern Circuit doing a lot of care and adoption work. When I am making a decision in respect of adoption, the whole life of the child and the adult life of that child is very much at the forefront of my mind, and what concerns me frequently, is the lot of the care leaver.

It is one thing a child going into long-term foster care and being looked after very well during that foster care, but what happens to the child afterwards in comparison to a child who has been adopted, usually by a committed loving affluent family, is frequently a stark comparison. A child leaving foster care or a child leaving care who is

bright, will have ongoing support from the local authority, sometimes with university etcetera, but let us be honest, the lot of the child leaving care is not usually as happy as that.

I think before we can have the paradigm shift towards assuming or thinking that adoption is not the best way forward in most cases, we have to have a lot more attention and a lot more resources placed into children leaving care, the care system, and to make sure they are as supported as any child who has been adopted.

THE RT HON SIR JAMES MUNBY:

The lady there in the glasses, next to John Simmonds.

DR SHARON PETAL:

My name is Dr Sharon Petal. I am a consultant psychologist and I am one of the beleaguered, battered and shrinking group of experts who you are rapidly losing, I am afraid to say. I have spent thirty years in child and adolescent mental health and I think that some of the ideas that you spoke about are very important. I think they have been talked about in some circles for quite a time. But, it requires that child and adolescent mental health opens itself up to thinking differently.

I am extremely tired of hearing about services that will not work with children who are in foster care, who will not work with children who are in permanent placements, and children may spend six months or nine months with people who could actually assist them to take significant steps forward much earlier.

We know, and there is sufficient research to make this very clear, that a number of children who have had particularly disadvantaged and abusive pasts, actually are sub-threshold for all sorts of diagnoses, but they have a vast array of difficulties, executive functioning, attachment difficulties, emotional problems, behavioural problems, PTSD. If nobody is going to really start taking care of those children early on, then no matter where we place them, they are going to be the children who produce the parents of the next generation. How many times do we have to go round this before we join up together law, social services, health, the third sector, and start getting it right?

Now, I think one of the problems with the 26 weeks is that it has completely obliterated the possibility of doing thoughtful, skilled, expert, therapeutic trials for change for parents because at that point, there are, and it may be a small percentage of parents who actually realise what they are on the brink of. There is not enough time. Experts are often instructed late, there are too few of us because many people will not work for the rates and to be treated as they are treated by some solicitors. I am beginning to feel I am one of them. I think that you have to seriously look at this system afresh.

I remember being cross-examined once about a child who I felt very strongly needed to retain contact with a sibling and I was cross-examined and I was told, 'well, what if we have the perfect adoptive placement but they will not accept contact with his birth family?'. I said, 'well then, you have not got a perfect placement. I am talking about this child's needs'. But I suspect that what people fail to recognise on this wobble board of trying to get it right is that adoption agencies and social services are struggling to find enough of the right people who can take on this task, and the amount of support that most adopters have for managing birth contact, the amount of support that birth parents actually have for doing it is woefully inadequate, and we have to resource it.

THE RT HON SIR JAMES MUNBY:

Now, I think you have got time for one more question.

SERVICE USER:

Hello. I am an adoptive mother of two children so I think I have got an interesting view on many of the things said today. So, I have two children. One is a very, very straight forward adoption and has absolutely thrived and done fantastically well at school and everything has gone very, very swimmingly well. So, great. Then I have a son that has all of the diagnoses that you have mentioned. Of course, none of which were told to me at the offset, and it has taken me ten years of fighting almost a full time battle to get my son the support he needs. That support has been withheld at every turn. Bridget was amazingly helpful with me at one point. The idea that adoptive parents get all the support and help is completely nonsense.

I run one local support group for adoptive parents. I am also in the POTATO group. So I am very aware of the issues that many of the people are facing in there. My son is fine. He has got lots of help and support. That was not available to him anywhere. He is now home educated because it was not available in any school in London, and his life is kind of looking okay now, but it really was not, and the idea that adoptive parents get the help and support they need is just nonsense, absolute nonsense.

THE RT HON SIR JAMES MUNBY:

Anthony? Do you want to make a comment about that?

ANTHONY DOUGLAS:

Both perspectives are right. I grew up, I would probably have been branded a POTATO teenager for what happened and there was no support whatsoever, and the support now is phenomenal compared to then. But, it still only touches the tip of the iceberg and it does not come quickly enough.

I think just the only point I would make is we have still got a very limited perspective on eligibility for help. It measures one part of a family and you can see it with parents with learning difficulties that they do not qualify for assistance often because they are not eligible in their own right, but if you took their children and the parents as a family eligibility criteria, they would be eligible. I do not think our systems, probably for resource reasons, are agile enough and quick enough to get in and we should be aiming for a system where as a POTATO adopter, you can ring up and help is 24/7 at the point of need and that is where we have got to try and get to somehow.

CATHY ASHLEY:

Can I just point out that that is also needed in relation to kinship care placements, . I know there are some kinship carers in the audience who are facing incredibly tough battles, often having to manage contact, so they are keeping up contact and often that is absolutely right for the children but with very little help in terms of that process. So, I completely agree with what you are saying, but I just wanted to make sure that kinship carers were not ignored from that discussion.

THE RT HON SIR JAMES MUNBY:

From my perspective, one of the things which has emerged from a number of contributions in different contexts is unsurprising, the problem of resources. There is a resource problem in getting legal aid for lawyers to represent families at the point of removal following birth. There are the kinds of resources you have been talking about. From my perspective, I do not for a moment suggest the battles judges fight are the same thing or remotely approach the battles you fight but one does feel, as a judge, one spends an awful lot of one's life fighting to try and persuade agencies to put in the services. The sound out from the bench is that you cannot get a referral to CAMHS for three months; CAMHS cannot do anything for this. It is a constant fight.

I think there are two problems, one is simply money. The financial resources are not there in anything like the level that is needed. The other is actual system problems because we have this problem of a technical issue, a family court cannot actually order a third party to provide services. A family court cannot actually order a local authority to provide services. There are different budgets competing there. So, often one can only get access to something through somebody else, like going through the GP.

I think there are really serious system problems there and until we sort out the system problems, until we have what David Norgrove and, indeed, Sir Andrew in the review, recommended a family justice system, this is going to carry on. We have made some changes, there is more of a system now than there was five years ago before David Norgrove reported, but the kind of problems you have been identifying, as indeed the problems we were earlier discussing about legal aid, just exemplify the fact that we do not have a family justice system.

We have all sorts of different players who it is very difficult to bring together. The impact of that on judicial thinking was very starkly brought out by District Judge Greensmith in saying that, understandably, and you can

hardly blame him for this, in deciding what is the best long-term permanent solution, he cannot blind himself to the fact that one solution does come with all the benefits attached, another solution does not. So, that is certainly one theme that has emerged.

I have succeeded in my objective which was to get a really good speaker here to come and stir things up and generate a very interesting debate which we have had.

THE RT HON SIR ANDREW MCFARLANE:

He needed a good sub-editor though, did he not?

THE RT HON SIR JAMES MUNBY:

I think it is probably time for us to draw the proceedings to a close. Can I just thank all of you who have come and those of you who asked questions. Much of the value of these occasions is actually the debate which takes place following the lecture, and the questions have exposed uncomfortable problems for a number of us. I suspect that if we are sufficiently humble, everybody in the circle of the family justice system recognises that there are problems which we need to address and we have not yet addressed.

So, thank you all, very much indeed, for coming. I hope you will come back next year for the second lecture and in the years to come. Thank you, very much.

[Recording ends]