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**THE ROLE OF THE JUSTICE SYSTEM IN DECISION-MAKING FOR**  
**CHILDREN**  
**BASPCAN 10<sup>th</sup> INTERNATIONAL CONGRESS**  
**UNIVERSITY OF WARWICK, 9 APRIL 2018**

**(1) Introduction<sup>1</sup>**

1. It is a pleasure to be here today. My theme is decision-making. Judges across the country in courts and tribunals make judgments every day. Some are straightforward. Some are non-contentious. At the other end of the spectrum some are highly complex. And some are highly contentious. All are important. Whether the decision is taken in a small, low value claim or whether it is taken in a multi-million pound claim, it matters. It matters to the parties involved, to their families and friends, and to wider Society. Judicial decision-making is an exercise of State power. Irrespective of the nature of the case in which a judge makes a decision, it is and must be the rule of law in action. It cannot be underestimated either in its scope or in the effect it has on all our lives.
  
2. It is very often the case that the most sensitive decisions a judge has to make are those that arise within the family justice system, particularly those involving children – those who are very often the most vulnerable members of Society. Since the publication of the Family Justice Review in 2011, the family justice system has been undergoing a systematic programme of reform, the aim of which is to ensure more and better access to justice for children and their families. That reform programme has seen the creation of a single Family Court through the Crime and Courts Act 2013. It has seen the implementation of the Family Justice Modernisation Programme, aimed at ensuring that the family judiciary and Her Majesty's Courts and Tribunals Service have the necessary structures, and leadership and management skills to ensure that the new – now no longer so new – Family Court is able to operate effectively.
  
3. The modernisation of family justice remains work-in-progress. As part of that process, in today's address, I want to revisit one aspect of that reform programme, the one focused on decision making and judicial decision-making as part of the process in which we are all involved: the young person, parents, carers, professionals and agencies and the judge of the Family Court. In July 2012, as part of the Judicial Proposals for the Modernisation of

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<sup>1</sup> I wish to thank John Sorabji for all his help in preparing this lecture.

Family Justice, I highlighted the need for frameworks of good practice. As described, they covered issues such as the management of individual cases, the leadership of the justice system and the use of expert evidence ie empirically validated materials relevant to the issues in a case. I also focused attention on decision-making. In doing so I made the following point:

*'Decision-making is a risk-based judgment call based on principles. That is what we appoint and train our judges to do. They are not alone in performing that task . . . Judges identify and solve problems which lead to an ultimate decision and the best judges, like the best advocates learn to discard the noise of peripheral disputes and concentrate on the key issues. The art of a quality decision making process is the balance between the risk being taken and the protection against that risk which is part of the process.'*<sup>2</sup>

4. The question of how we can ensure that all judges are in a position to make the best quality decisions they can is not however simply an issue for the family courts. It is as pertinent to the criminal, the civil and the tribunals justice systems. It is particularly interesting at the present time because of the development of what has been described as a more problem-solving approach to judicial decision-making. This is evident in the current civil justice reforms that are being carried out as a consequence of Sir Michael, now Lord, Briggs' *Civil Court Structure Review*. As the Master of the Rolls has described it, the developing new approach to the delivery of online civil justice:

*' . . . will be problem-solving in the sense that the [court] . . . will help the parties find the appropriate solution to their dispute. A problem-solving purpose is the next step in the evolution of the [Civil Procedure Rule's] Overriding Objective, which lies at the heart of modern case management.'*<sup>3</sup>

A problem-solving approach is well-known in the family justice system. That it is moving to the heart of civil justice, and has also been a central feature of tribunals justice for many years, emphasises the importance of ensuring that all judges are properly equipped with the right skills, materials, and knowledge to play that role effectively. It requires a greater emphasis on and understanding of how we continue to attain high quality decision-making.

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<sup>2</sup> E. Ryder, *Judicial proposals for the modernisation of the family justice system*, (July 2012) at 9.

<sup>3</sup> Sir Terence Etherton MR, *The Civil Court of the Future*, (14 June 2017) at [29] <<https://www.judiciary.gov.uk/wp-content/uploads/2017/06/slynn-lecture-mr-civil-court-of-the-future-20170615.pdf>>.

5. There is another reason why it is important that we get it right. We often hear about the importance of role models. We do not, however, often hear talk of our civic institutions being role models. They are and must be. Our courts and judiciary, as a civic institution, have an important role to play in leading by example. If we set and continue to set high standards, if we demonstrate through our approach that we will not accept less than the application of those standards in what we do, we can hopefully help secure a race by all of us to the top. In terms of evidence-gathering and decision-making in those professions that are involved not only in the judicial process, but also more generally, we may help build on and maintain existing cultures of excellence, while also helping to foster such cultures in new areas. Collaboration in the development of good practice, its dissemination and application should be our acknowledged goal. That the collaboration should involve the views and perceptions of the young people and families involved in our decision-making goes without saying.
6. In looking again then at how we improve the state of the art, I particularly want to consider the following:
  - The principles underpinning our approach; and
  - the nature of the evidence that informs judicial decisions.

### **The Principles**

7. As a starting point, our approach must be underpinned by three principles. I say as a starting point because as we develop our approach, more principles will become relevant.
8. The first principle is that the approach to improving and enhancing judicial decision-making must be systematic, evidence-based, and tested. We cannot afford to pluck best practice out of thin air. It is neither whatever is the latest fashion of the day, nor is it what any particular judge finds attractive or interesting: even less the sometimes uninformed and historically hidebound views of those who happen to exercise power. It is no use a judge advising other professionals about their skill and expertise without the benefit of access to evidence based materials rather than mere common sense or personal preference. Best practice and its development cannot be an exercise in ad-hocery. It must be thought out, considered and rigorously tested. And when its lessons are implemented, they too must be tested and monitored.
9. One of the great flaws of our justice system is that, historically, we did not test reform before implementing it generally. We have tended to rush to implementation, when a more

considered approach would have been more advisable. We are now far more used to testing reforms through pilot schemes, so that we can see how they operate in practice, whether they achieve their aims, and whether and if so what unintended consequences they create. In that way we can take steps to rectify any problems before full implementation occurs. In the current HMCTS reform programme which is digitising our court and tribunal processes, the use of pilot schemes is embedded. We have learnt. And we go on learning.

10. The central importance of learning from continuous testing ought to be obvious to all. It is inherent in the precedent based system that underpins the development of the common law. It is always inadvisable for a judge to express opinions about issues that are not decisive on the facts of a case just as it is inadvisable to express opinions about the practice of other professions without reliance on evidence that has been tested. If we turn from the individual case to the operation of our justice *systems*, evidence that has been tested is sorely lacking. If there is a need to demonstrate the utility of ongoing testing we need only look to developments in Canada. In British Columbia, they have developed an online tribunal, known as the Civil Resolution Tribunal, for small claims and what we would call landlord and tenant disputes. The online system has been designed to enable users – litigants – to provide feedback at every stage of the process. That feedback is then collated and – importantly – acted upon to refine and improve the system.<sup>4</sup> The same type of feedback process is being employed in the pilots of our court and tribunal reforms.<sup>5</sup> Feedback and refinement cannot stop at the inception of reform. As Canada is very properly demonstrating it must be an ongoing process. I would suggest as a first principle that the same type of ongoing testing and refinement must be embedded in our approach to maintaining and improving the quality of judicial decision-making.
11. Turning to the second principle: reform needs to be implemented through rigorous and informed training. It might be said that judges do not need to be given training in how to make decisions. After all judges, both before and after appointment, have spent their careers testing evidence, hypotheses or theories of the case, and drawing conclusions accordingly. Critical thinking is in the judge's DNA. It is. But there remains much that can be learnt to improve those skills. Lord Neuberger, in a lecture given in 2015, alighted upon

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<sup>4</sup> See Tanja Rosteck, *Happy First Birthday, Strata Solution Explorer!*, and *Solution Explorer Quarterly Update: 2017 Q4*, <<https://civilresolutionbc.ca/happy-first-birthday-strata-solution-explorer/>>; <<https://civilresolutionbc.ca/solution-explorer-quarterly-update-2017-q4/>>.

<sup>5</sup> See Sir Terence Etherton MR, *Civil Justice after Jackson*, (15 March 2018) at [33]-[35] <<https://www.judiciary.gov.uk/wp-content/uploads/2018/03/speech-mor-civil-justice-after-jackson-conkerton-lecture-2018.pdf>>.

the issue at the heart of this principle.<sup>6</sup> He noted how an evidential study of judicial behaviour carried out over ten months by eight Israeli judges and which examined over 1,000 rulings on applications before parole boards came to the conclusion that decision-making differed depending on the time of day. Lord Neuberger noted that the study showed that the judges granted 2/3rds of the applications in the morning, but as the day went on the number of approvals declined to zero. The approval rate returned to 2/3rds after the judges adjourned for lunch.<sup>7</sup> He also noted experimental studies that showed that judicial decision-making can be effected by cognitive bias and heuristics. Anchoring effects, for instance, have been shown to apply to judges.<sup>8</sup> And again, as he pointed out, subconscious bias is something that needs greater consideration than it has had in the past.<sup>9</sup>

12. The point from this is not to feed judges more often. It is to emphasise the importance of ensuring, in developing training and materials to improve judicial decision-making, we draw on experience from the social sciences, from behavioural psychology, from legal academics who study judicial decision-making and so on. We need to ensure that the approach we take is one that is grounded in robust evidence drawn widely and which has itself been subject to critical scrutiny. As judges we are all trained in the legal method from law school, through our practices as lawyers, and while on the bench. Judges and their judge-craft, cannot however be islands unto themselves. If we are to maintain and enhance the quality of our decision-making we need to broaden the legal method to incorporate insights drawn from other fields where critical thought plays a central role, just as we also need to have a greater understanding and appreciation of the social, economic and business context of the cases that come before us. As Lord Neuberger rightly pointed out, we needed to develop subconscious bias training so that we are aware of it and aware of how to combat it. We have, since his call to arms, developed in the Judicial College an impressive array of induction and advanced training that draws on good practice in this field of knowledge.

13. Let me illustrate the importance of drawing insights from other areas by reference to the current civil justice reforms. I noted earlier that those reforms, particularly the Briggs reforms, are intended to introduce a problem-solving focus to the judicial process. This differs from the traditional common law adversarial process in civil proceedings. As such it will necessarily require the application of different skills and approaches than judges have traditionally applied. Its intention is for judges to be more investigative. Investigation

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<sup>6</sup> Lord Neuberger PSC, *'Judge not, that ye be not judged': judging judicial decision-making*, FA Mann Lecture 2015 <<https://www.supremecourt.uk/docs/speech-150129.pdf>>

<sup>7</sup> Ibid at [25].

<sup>8</sup> Ibid at [26].

<sup>9</sup> Ibid at [31].

requires different skills than forensic analysis in the adversarial context, as those familiar with the family and tribunals justice systems know. Its intention is also to bring mediation and early neutral evaluation into the case management and dispute resolution processes. It thus goes further than Mediation and Information Meetings in the family justice system and will draw on the skills and experience used in financial dispute resolutions hearings, issues resolutions hearings and settlement conferences which will now be familiar to all of you and which rely on early neutral evaluation which is a form of risk assessment.

14. Again though, care is needed. Just as investigation differs from the cut and thrust of the adversarial process and has its own procedural protections, mediation calls for different skills than early neutral evaluation. While the former can involve evaluation of opposing cases, just as the latter intrinsically does – both foreshadowing what a judge may decide at the end of an adversarial process, the latter needs to be evaluative. Mediation need not, and some may say, should not focus on the assessment of argument, evidence and rights, but rather should be and properly is a facilitative process which focuses on helping the parties to a dispute to identify the interests that underpin the positions they have taken in the litigation. And having done so, to explore creative – problem-solving – solutions. That is an entirely different approach, calling for different skills. The danger without effective training, without exposing judges and those court or case officers who may carry out such mediation sessions to the range of different approaches to mediation, is that the default process will be an evaluative one. It will be one that does not focus on problem-solving because it could be interpreted and applied within the terms of the adversarial, rights-based, paradigm.
15. If we are to enhance judicial decision-making, we will need to draw widely from expertise in facilitative mediation as well as evaluation. We will need to expand the nature of the paradigm within which judges, courts and tribunals carry out their role, and make decisions concerning individual cases and also match the right kind of decision-making process to the risk that the proceedings are intended to protect against. In the Employment Tribunals we have an impressive track record of early conciliation by Acas, early neutral evaluation during case management and the availability of judicial mediation: all before the parties submit their long term relationship to the process of adversarial decision-making. If we do not enhance our skills in this way, we will not be able to develop this aspect of our reforms as well as we could. Hence the need for a systemic, evidence-based and tested approach that ensures our training properly draws upon all relevant sources to enhance judicial decision-making. Here the point is that we need to be provided with

effective training and experience of facilitative mediation, of principle-based as well as adversarial negotiation, and other problem-solving approaches.

16. This takes me to my third principle. It is intrinsically linked with the first two. It is the need for the provision of high quality materials to assist judges in carrying out the decision-making role. It should be clear that such materials will be needed for training purposes. We will need to develop and enhance the role played by the Judicial College in preparing training materials and training judges. If we are to provide a systematic approach, it must play an integral part. Expert materials will also, however, need to play a central role in the decision-making process itself. They cannot simply be a means to enhance skills and training. Such materials must also be available to judges when they are in courts and tribunals deciding cases. In the tribunals system a specialist judge or panel is expected to know their specialist material just as I, as Senior President, am required to administer my justice system so that it is specialist and innovative. This takes me to the second general point I want to make, concerning the nature of evidence that informs judicial decisions.

### **The nature of evidence**

17. We can understand the nature of evidence in two ways: the evidence that helps inform individual judicial decisions; and, the evidence that informs the improvement of the family justice system as a whole. The two will of course be interlinked. Work is being carried out to improve both.
  
18. A recent collaboration between the judiciary, academics led by Professor Broadhurst at Lancaster University and the Nuffield Foundation has produced real results. The Foundation seeks to develop evidence-based practice to help individuals exercise their rights. It thus promotes civic activity, and seeks to promote the health of Society generally. The Family Justice Review identified a gap in our understanding of the family justice system, and particularly concerning how it makes decisions concerning children. It was an evidential gap. We did not have sufficient evidence drawn from the system which could assist judges to make individual decisions or leadership judges to administer the justice system – and that is perhaps a significant under-statement. The Nuffield Foundation has agreed to fund the establishment of an organisation – the Nuffield Family Justice Observatory – to fill that gap.<sup>10</sup> Its aim is to ‘*support the best possible decisions for children*

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<sup>10</sup> K. Broadhurst, T. Budd, T. Williams, *The Nuffield Family Justice Observatory for England and Wales: Making it Happen*, (The Nuffield Foundation, 2018)

*by improving the use of data and research evidence in the family justice system in England and Wales.*<sup>11</sup>

19. It is going to achieve this aim in a systematic, evidence-based way drawing on evidence from England and Wales. It will do so through stakeholder engagement and through examining the available data on the operation of the system. As such specialist agencies and bodies, such as Cafcass, child protection and care organisations , and I hope those agencies who you represent and who represent you, will have an important part to play. This work will be a collaborative exercise. It cannot but be if it is to produce robust, research-led and peer-reviewed materials for judges and other decision-makers to draw upon.
  
20. It will also consider and learn from best practice from abroad. In this respect, it has already noted how the Association of Family and Conciliation Courts has already established a practice of working through interdisciplinary teams drawn from its international membership to consider and reach a consensus on best practice to, for instance, child contact arrangements.<sup>12</sup> Equally, drawing on international experience and evidence related to it could be used to develop a more rigorous application of, for instance, collaborative law techniques, and not least the development of that family dispute resolution process into an inter-disciplinary team model where different practitioners – psychologists, child development specialists, mental health practitioners and so on – from a wide range of fields are integrated into the process to help the parties devise and implement problem-solving solutions, ones that are best for the family and for the children within the family.<sup>13</sup>
  
21. By looking at international developments, at best practice across other jurisdictions and learning from them, I hope the Observatory will be able to provide a rigorous and evidence-based series of proposals about how the system as a whole can be improved, and in this way how judicial decision-making can consequently be improved. It should go without saying that such an approach ideally ought not to be limited to the family justice system. Rigorous evidence-based reform proposals that draw on best practice from across the world – and subject them to a proper examination of how and in what ways they may be adapted for practice here – are something that ought properly to underpin our approach to reform generally across all of our justice systems. The Observatory will follow the lead of other ‘What Works’ centres in allied professions and justice systems that are enhancing our

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<sup>11</sup> Ibid at 4

<sup>12</sup> Ibid at 8.

<sup>13</sup> P. Tesler, *Collaborative family law*, Pepperdine Dispute Resolution Law Journal (2004) Vol. 4(3), 317, 330ff.

knowledge and skills as decision-makers and which can help the judiciary improve the administration of justice. For those who rightly caution the judiciary not to become enmeshed in the politics of Executive policy, this is about the operation of the rule of law, its effectiveness and efficiency, which is properly the judiciary's concern.

22. Moving away from the system-level, the Observatory is to look at ways in which the individual judicial decision-making process can be improved. There will be a number of limbs to this. It will work to *'identify priority issues where empirical evidence may help guide practice'*; provide *'reliable summaries of what is, and is not, known from research or administrative data'*; combine *'knowledge from empirical research with insights from policy practice and user experience'*; and, work with *'system professionals to develop, update and test guidance . . . based on [their systems] knowledge'*.<sup>14</sup>
23. This multifactorial approach will, I hope, improve individual judicial decision-making in a number of ways.
24. First, it will ensure that you as professionals can bring your experience to bear in the development and testing of any such guidance. In this way, it will ensure that guidance does not just have the rigour of academic study and research, but also benefits from the practical, professional insights of practitioners.
25. Second, it will help to overcome one of the problems that the Observatory brought to light during the initial scoping study, which underpinned the basis of what it determined would be its aim. This problem was that often practitioners were unsure about whether research studies or findings should be placed before the courts. As the scoping study concluded,

*'Although practitioners recognised that their understanding of, and deliberation about, cases was informed by background child welfare knowledge, they were far less confident about making reference to specific research studies to support arguments in court. Social workers feared cross-examination if they made direct reference to research, whereas lawyers, barristers and judges felt that this kind of 'extra-legal' knowledge was best introduced to the court by an expert instructed on the basis of specific expertise.'*<sup>15</sup>

Where practitioners also have limited access to such research materials and where a case may not warrant or justify the appointment of an expert witness, the provision of reliable,

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<sup>14</sup> K. Broadhurst, T. Budd, T. Williams at 4.

<sup>15</sup> Ibid at 7.

rigorous education and information to the judiciary is a key way in which their understanding of specialist issues such as child development may be informed. Indeed, not only is it wrong to proffer expert evidence when it is not necessary, it has always been the case that expert evidence should not be provided where the issue is within the skill and expertise of the court.

26. In this way we will build on the excellent initiative being carried out by the Royal Society, the Royal Society of Edinburgh and the judiciary in which expert primers for judges on specific areas of scientific study are being developed. As you may know two such primers have already been published – the first on Forensic Gait Analysis,<sup>16</sup> the second on Forensic DNA Analysis.<sup>17</sup> Those primers seek to provide judges ‘*with the scientific baseline from which any expert dispute in a particular case can begin.*’<sup>18</sup> They provide context and help foster greater understanding, thus improving a judge’s ability to get to grips with such evidence as is presented by an expert during a trial. The same will, I hope, be said of the Observatory’s research studies.

27. They may play a further role, where there is no expert, of educating the judge about the state of the art in the field which they cover. This will be of particular importance where there have been developments in a particular field. Where the court is a problem-solving tribunal this will be of crucial importance. It is only where a judge has such knowledge that they will be able, with the parties and their representatives, to be in a position to explore all the possible options to resolve the issues in the case before them. They will help underpin the skill and expertise of a specialist judiciary.

28. Third, I would also hope that the Observatory will enable us to return to unfinished business from the Family Justice Review. In that review, the conclusions of which were accepted by Government and the then Lord Chief Justice, Lord Judge, I recommended, as part of the supporting architecture for reform, the introduction of at least ten good practice guides. They were to cover:

- Local authority pre-proceedings work
- Social work evidence

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<sup>16</sup> See <<https://royalsociety.org/~media/about-us/programmes/science-and-law/royal-society-forensic-gait-analysis-primer-for-courts.pdf>>.

<sup>17</sup> See <<https://royalsociety.org/~media/about-us/programmes/science-and-law/royal-society-forensic-dna-analysis-primer-for-courts.pdf>>.

<sup>18</sup> Per Lord Hughes JSC <<https://royalsociety.org/news/2017/11/royal-society-launches-courtroom-science-primers/>>.

- The Official Solicitor’s capacity guidance
- The timetable for the child
- Key issue identification
- The threshold for intervention by the State in a child’s life
- The use of experts
- 3<sup>rd</sup> party disclosure and concurrent evidence in proceedings (or hot-tubbing as it is known colloquially)
- Placement and care plan scrutiny; and finally
- The use of research in the court.<sup>19</sup>

29. Some of these elements of practice have been well developed but, as yet, insufficient attention has been paid to the collation and analysis of evidence about the practice that is the consequence. The Observatory’s work will clearly engage in this and will, in particular, focus on the last of that list: the use of research in court. I would also hope that it will help the development of practice guides, so that family courts, judges and practitioners across the professions are equipped with the materials that the reform programme anticipated. Successful reform requires change to be implemented and constantly reviewed.

30. I should of course emphasise that the development of primers and practice guides, and the use and availability of research more generally to judges and practitioners is not a means to bypass expert witnesses and the scrutiny that must be engaged where professionals disagree. As was once said,

*‘we cannot demand of the judges that they have knowledge of every branch of science, of every art and of the mysteries of every profession.’<sup>20</sup>*

There is no intention to attempt to meet such a demand. It would not be possible to do so. And primers and practice guides are not intended to be an attempt to do so. Expert evidence may not always be necessary, but whether it is necessary on the facts of a particular case is, in part, dependent on the skills and knowledge of the specialist judge. We all need skill and experience to realise that which we do and do not know. Knowledge of the context and research in an area ought always to be available. The primers and guides will ensure that that is the case. They are meant to be educative, and in being so they may be relied upon by judges, but subject of course to challenge in an individual case. To

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<sup>19</sup> E. Ryder, *Talking about Reform* (26 June 2012) at 5.

<sup>20</sup> J. Jolowicz, *On Civil Procedure*, at 225.

facilitate the possibility of such challenges, which must be a genuine opportunity in order for the courts to maintain a commitment to fundamental principles of procedural justice, primers and guides must be made available publicly. They should therefore be placed on the Judiciary of England and Wales' website so that they are readily accessible to anyone who wishes to know what material is available to judges.

31. This leads me to my final point. While the intention is not to replace experts, there will be cases where a party either will not be in a position to appoint an expert or it will be disproportionate for one to be instructed. Equally, there will be cases where expert evidence will be unnecessary.
32. In those circumstances, the evidence that the judge and the parties may have available to them is that from witnesses which may be specialist without technically being that of an expert under the Rules, or from specialist agencies involved in the case, and/or the primers or practice guides. The risk in such cases is that there will be no effective – no critical – challenge to the material. Such a challenge may be necessary where, for instance, the guidance does not go into sufficient detail or where there is a case for an alternative view notwithstanding the fact that the guidance has been peer-reviewed and sets out an accepted professional opinion.
33. In such cases, there is a risk that the primers or guidance may inadvertently mislead the parties and the judge. In the absence of adversarial scrutiny, what should be tested may not be. How are we to ensure that judges do not default to simply accepting that which they are familiar with or that which is in front of them?
34. My first answer to this, is one I referred to earlier. It is the provision of sufficient and effective training in behavioural sciences, so that judges become more aware of how the decision-making process works. It is to instil in them greater awareness of heuristics, confirmation bias, and so on so that they can better approach the material before them with a critical, investigative eye. That is the value of the investigative or inquisitorial approach we have developed in the Tribunals.
35. Secondly, it is to ensure that expert and specialist agencies are appropriately involved in the justice process. If expert practitioners know that the judge has research material before the court, the fear of introducing it or discussing it in evidence will inevitably decrease. If its use is understood to be the norm, then reference to and practitioner challenge to it will

also become much more normal. The prospect then of a court not engaging with the material critically will as a result be minimised.

36. In this way we can help to make judicial decision-making a more critical, collaborative exercise: one which draws on practitioner expertise at the macro level through primers and practice guides, and at the micro level through enhanced practitioner involvement in individual cases. There is, of course, much work to be done by the Observatory, the judiciary and all stakeholders in the family justice system – and in the wider justice system – to make this work effectively. It is work that if done properly and well, will benefit us all, not least the children whose interests we are charged to safeguard.

## **Conclusion**

37. I have only been able to touch on some of the issues concerning how we should approach our decision-making and improvements to it. Underpinning what I have considered is a broader theme. It is that the delivery of justice is changing. For a long time justice was something that was done by the State to its citizens. It was the product of a primarily adversarial process, and one that was party-led, or perhaps more accurately lawyer-led. That adversarial approach is challenged in the context of family justice with its more inquisitorial process, in which the focus must be on safeguarding children by securing their best interests. The retreat from the adversarial model can be seen elsewhere, for example in the criminal context, with the development of problem-solving courts and attempts to introduce restorative justice techniques and processes. It can be seen in the civil context through the Briggs reforms and the intended introduction of investigative and problem-solving approaches to the resolution of money claims in the digital court. It can be seen in the family context, where as a result of the Family Justice Review it has been embedded in our approach in the Family Court and through the development of, for instance, the Family Drug and Alcohol Court<sup>21</sup>. And the more investigative, inquisitorial approach has always been at the centre of the approach in the Tribunals.

38. If we are to ensure that these developments enhance how we deliver justice, we will need to ensure that judges have the training, experience and materials to enable them to carry out their evolving roles effectively. If we are to continue to make high quality decisions, and decisions in a changing judicial culture, the right training, experience and materials must be drawn from a multi disciplinary, peer reviewed and validated research base. To obtain that we must both demonstrate leadership in identifying and putting in place what is

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<sup>21</sup> See, for instance, J. Harwin et al, After FDAC: outcomes 5 years later Final Report, (2016) <[http://wp.lancs.ac.uk/cfj-fdac/files/2016/12/FDAC\\_FINAL\\_REPORT\\_2016.pdf](http://wp.lancs.ac.uk/cfj-fdac/files/2016/12/FDAC_FINAL_REPORT_2016.pdf)>.

necessary and acknowledge that we should draw on the skills and experience of others. As I noted at the outset of this address, judicial decision-making is an exercise of State power. The State has a duty to ensure that all proper steps are taken to ensure it is capable of being exercised properly i.e. justly. If it does so, and we take the steps I have outlined, I suggest that not only will the quality of our decision-making processes improve, but we will ensure that the judiciary is able to maintain and enhance public trust and confidence in the rule of law. And importantly, in making the difficult decisions that judges do on a daily basis, it will help ensure that we make the best ones for the individuals involved, particularly where those individuals are children. As a Society committed to the rule of law it is a responsibility we cannot shirk.

39. Thank you.<sup>22</sup>

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