FAMILY JUSTICE COUNCIL

THE THIRD BRIDGET LINDLEY ANNUAL MEMORIAL LECTURE

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"Care Proceedings in England: the Case for Clear Blue Water"

on

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At

Prince Philip House, London

THE CHAIR:

Welcome to this conference. You have done the right thing. This is an important day. The Family Justice Council sits in a unique position in the family justice world and it provides a space where the very discussion that we are going to have today, stimulated by the various contributors, can take place. We are at a moment where everyone agrees that there is a need to look at what we all do, judges included, because of the high burden of work that we have to cope with and, within that moment, what is surprising and very welcome is that there is a degree of common ground between all of the people who are thinking about this and commenting upon it. Most of those people will be contributing to the addresses that we will hear today and then there will be breakout sessions later on in the programme where we hope you will take a very active part in the discussion so, as I say, you have done the right thing by coming today.

First of all we are going to have the annual Bridget Lindley Memorial Lecture. Normally, that is a freestanding event put on by the Family Justice Council but we have brought it within the compass of today because our speaker, Isabelle Trowler, is at the centre of the discussions that are going on. Her recent policy briefing document, "Care Proceedings in England: The Case for Clear Blue Water," was an important contribution in the autumn to the discussion and that is what she is going to talk to us about in a short time.

Isabelle is very well qualified to speak to us. She has had a lifetime - albeit no doubt a very short lifetime as she is so… *[laughter]* a long time, she says - in the whole world of working with children, not just social work. In recent times, since 2013, she has been the chief social worker, the social work tsar in the Department for Education, I think the first person to hold that post, so she sits as a bridge as it were between the profession and Government and it is important that we know what she has to say about these various topics. Indeed, I think what she says is itself important.

Before I ask Isabelle to address us, I need to and I want to say something about Bridget. Her photograph is up on the screen behind me. This is the Third Bridget Lindley Memorial Lecture. It is astonishing that so much time has gone by. She was a splendid person; strong views and always very sound views. In the middle of all these discussions and debates that are going on, I keenly miss her presence and those who are in the room who used to work with her will know exactly what I mean. More than once in recent times I have found myself thinking, "What would Bridget say about this?" and were she still with us we would be in no doubt what Bridget would say about all of these various matters. Her contribution was immense. The Family Justice Council, in holding these debates, is not simply going through the motions in remembering Bridget. We, who knew her and worked with her, do remember her and these lectures are an important point in the family

justice year now and I hope they continue for a long time to come. We are very grateful to the Family Justice Council for continuing to remember Bridget in this way and the astonishing loss that we all felt from her death.

Isabelle, I am now going to invite you to give the Bridget Lindley Memorial Lecture. Isabelle Trowler.

ISABELLE TROWLER:

Thank you. Just as an aside, you know what they always say about social workers being late, you can see that I am holding up the tradition in true style and for that I really apologise.

Today I am honoured indeed to give this year's Bridget Lindley Memorial Lecture. I have roamed around the corridors of power for five years now, watching how the wonderful democratic machine operates with interest, intrigue and occasionally, it has to be said, gobsmacked incredulity. I have learnt many things, one of them being that to change anything ever, yes, you need a critique, but above all else you need passion and ideas and a rock solid value base from which you deviate at your peril.

Bridget had all of these attributes in buckets. I did not know Bridget very well but I know this much: she was completely charming, committed to doing the right thing, astounding intelligence and a radiating warmth. The last time I saw Bridget we chatted on the Strand having left an evening talk about family justice and she was off to see her mum somewhere over Waterloo Bridge and I was off home to be a mum and we had a brief chat about children and their mothers.

It is these relationships which bind us throughout our lives, a net of social connections which holds us as we travel through the various trials and tribulations which make up a whole life; a net that catches us when we fall, makes everything feel just about okay when the going gets tough and a net which helps us bounce right back up. For the luckiest amongst us, that bounce makes us feel like the sky is the limit. We all know too the human pain of loss and change. Things just happen and life just happens but many of us here today are involved one way or another in the disruption and occasional dissolution of other people's relationships. Of course, we all do lots of other things too but this aspect of our work is ethically the most difficult and the most contested, as it should be.

As a 20-something young woman with anarchist political leanings, a class analysis of the world order which I still hold today and a very suspicious attitude towards state power and a perspective which compelled me constantly to declare to anyone who would listen (invariably that meant only my parents and my cat, Ginger) that whoever you vote for, the Government always wins. My

mother and my father and, I have to say, probably Ginger too would roll their eyes at this point and just hope for the best for me. Not long after, I embarked on a career in social work. Social work is a rights-based profession and indeed we are often a feisty bunch, fighting for services, advocating on behalf of people in need and for a larger slice of the pie.

But social work is about something else too. It's very much about trying to limit the worst excesses of state control. It's about liberty and freedom of choice, personal autonomy and the sanctity of private family life. So my die-hard anarchist leanings were somehow associated. Having declared on my very first day of my Masters in social work training at the London School of Economics (having skipped off in the afternoon - I was always a bit of a truant - to watch "Ladybird Ladybird" by Ken Loach) that I shall never, ever, ever work in child protection, I have rather sheepishly done the exact opposite. Over those 25 years I have seen so much and learnt so much and I want to share some of those reflections with you today.

I have seen what we understand to be "significant harm" change dramatically. I have seen what we used to consider as "parents struggling in deprived communities" change into a very, very broad concept of "neglect." We label the parenting of a mother with enduring mental ill health whose children are living in extreme emotional and socially deprived conditions "neglect" rather than label women with enduring mental ill health whose children are living in extreme emotional and socially deprived circumstances as "a family who needs help and support." We locate the root cause of a multitude of social problems within families that previously would have been considered a causal impact of poverty and inequality. I have seen the march of predictive future harm and the use of section 20 voluntary accommodation falling into disrepute and, in places, disuse, threatening one of the central tenets of the much-loved Children Act 1989 - partnership with parents.

I have seen the public and political scrutiny of practice grow and grow into a colossal industry. When I was a practitioner, both pre and post-qualifying, I ducked and dived and got things done. There were very few rules by comparison to today and for those that did exist no one would necessarily even know if you did break them. Now, social workers are often too stuck in the treacle of the rules other people have made up for them. But these rule-less days were not halcyon days. I worked in places where we just did not know how many looked after children we had or with whom they were living. Looking back, it was often chaos.

Most recently, I have seen an endless stream of justifications for the rise in numbers of children coming into care and the increase in care proceedings as if we, in positions of considerable power, are powerless to do anything about it. I do not believe that for a second. I think we can and I think

we should do something about it. It is us, it is no one else but us, that makes these life-changing judgments about other people's lives.

I am also no bleeding heart. I have made thousands of decisions about children and their families, small ones and really big ones. I have fought tooth and nail for families so that they could stay together with the right support but I have fought tooth and nail to take children away from parents who just cannot cut it - most often because of their own deeply troubled histories and enduring pain. I am pro family support and anyone who has ever worked with me knows that to be the case, but I am pro adoption too. I have been that agency decision maker for adoption and I have no doubt that sometimes, that is the right solution for a child. We are currently at risk of developing a very polarised debate about family support versus family separation. We have to break out of these very unhelpful binary positions. It is possible to be both/and.

Last year I spent several months as part of a yearlong fellowship with Sheffield University reviewing families' cases that had been through public proceedings. Over the last few years the numbers of children and families caught up in the statutory net of children's social care (from child protection enquiries to the care system to public proceedings) has been increasing and alongside that the explanations for those increases have been wide and varied. So I needed to see for myself what was happening to families and chose court proceedings as my focal point. Even though only about 25,000 children are subject to court proceedings - out of the 700,000 children in contact with children's social care each year - what happens in those courtrooms ricochets throughout the whole system. The decisions help set the local threshold for what is understood to be significant harm and court judgments influence the practice approach taken in all cases in myriad ways, unintended or otherwise.

Under the academic supervision of the brilliant Professor Sue White and alongside a team of experienced social workers, we reviewed care proceedings involving over a hundred children, most of which had recently concluded in 2018. In the majority of cases reviewed, the health and social problems experienced by parents led to their children sometimes to experience excessive and continuous domestic chaos and at worst exposed them to very serious child abuse and neglect. In other cases, the degree of harm to a child was less obvious.

There were some striking differences amongst the local cohorts of families in proceedings. In one authority there was a large number of adults (including parents, relatives and friends) on the Sex Offenders Register who posed a risk to the children who were subject to proceedings. The prevalence of sex offenders in that area was like nothing I had ever seen but for the local area it was considered unremarkable. In another authority there were very few parents in proceedings

with learning disabilities. Another authority had comparatively little drug addiction amongst parents facing court. These distinctions are critical to understanding local families' needs and the commissioning of services to support them but they are also likely to have an impact on variations in rates of applications and types of disposals too.

The social circumstances of many of the (extended) families were certainly fraught and there was little sense that families had extra resources to draw upon, to help support or change the circumstances in which they found themselves. There was also very little commentary in records on how other social circumstances of families were impacting upon parenting capacity or their ability to change and almost no commentary about if, and how, living in deprivation and poverty might relate to the standard of care provided.

I often hear as one explanation for the rise in proceedings that families are more complex, young people are more complex, children are more complex. We found no evidence of this. The families facing court proceedings were entirely recognisable, experiencing almost exactly the same social, economic and health problems as the families we were working with 10, 20, 30 and even for one of the reviewers, 40 years ago. So that has not changed. We did see more cases involving teenagers than historically we would have done and about a third of families had had previous children removed.

The significant harm threshold was clearly met but frankly that is not every difficult to do. We have 120,000 children in England each year who have or are likely to suffer significant harm and who are subject to child protection plans. The vast majority never reach a courtroom. But having said that, without doubt the vast majority of decisions taken to initiate care proceedings were certainly reasonable. The question is whether or not they were always necessary.

In the majority of cases we found that yes, they were very necessary. The family circumstances of the children removed were impossible to accept or change - certainly within the timeframe available if the child's best interests were to be met. But we found a very significant proportion of families subject to proceedings who ended up staying together - with 34 percent of all disposals resulting in a Supervision Order. The public purse pays a heavy price for taking families into court only for children to remain at home anyway; but families and their children pay the heaviest price of all. Inevitably, we had to question - was it really worth it?

Supervision Orders in the study became a proxy for what we ended up describing as "thin, red line decisions" because the court decision for a child to be removed from their parents could go either way. When we looked at the national data, it was clear that there had been a significant increase

in the numbers of applications made by local authorities for Supervision Orders and many more made as the final disposal by the courts, and the variation between local areas across England, is wildly different. Why is this happening? Social workers have always had a focus on the welfare and protection of the child and, in line with the Children Act, have mediated between family autonomy and state control, building on strengths and family capability to keep the family from crossing the red line. So what has changed?

In the last few years there has been a much greater and deliberate national focus on the early protection of the child, a stronger focus on lower level parenting concerns as first signs of cumulative neglect and with a recognised risk of future harm, a greater sense of urgency to act and secure permanency without delay and the need to act on the side of safety. We concluded that this collective endeavour across children's services, heavily influenced by government policy and inspection frameworks, has a created a different context in which social workers are making decisions about initiating care proceedings. In line with these expectations, the study found an increasing emphasis on predicting what might happen, rather than what has happened, and that there was far less tolerance of multiple attempts at generating adequate change within families before an application to court.

The study found that social workers do continue to make many efforts to work with families and provide support and services to those that were struggling. Indeed, I see this hard work and dedication in really fraught circumstances all the time.

Ultimately, though, social workers were clearly on the side of the child, so much so in fact that it was a point of frequent frustration for social workers that the courts were not always on the same page, describing the courts as "*pro parent*," or "*pro dad*," "*as if we were working to a Parent Act rather than a Children Act*" in which "*parents are given any opportunity*". Families were given chances to change but the sentiment was clear: the moral imperative was to safeguard the child with much less what was described by social workers as "*messing about*", focusing on "*hopeless strategies*" to keep families together, commenting too that the expectation "*to do everything and anything*" to keep families together, had really changed.

One of the most striking findings of the study was the extent to which families were expected to have open and honest relationships with social workers and that an absence of this trust was taken as an indicator of increased risk to the child. Parents were described as "*not open and honest*", having "*deliberately misled the authority*" or "*withheld information*", were "*being collusive*" or "*failing to inform*", "*attempting to manipulate*", "*failing to be proactive*","*breaching working agreements*", "*lying to professionals and telling the children to lie*". Without trust and confidence that the family

is able to work in partnership with the local authority, the social worker may have little choice but to consider care proceedings as the best way of protecting a child, even if the levels of risk or harm have actually not shifted.

For the system to be a fair one, however, there must be sufficient social work skill and organisational capacity to effectively build those relationships of trust and confidence in the first place.

And it did raise an even more troubling question for me - are we asking the impossible of parents? We have an incredibly strong child focus and that is laudable - and that is something that we do not want to change - but in doing so have we made, inadvertently, the family the enemy? We have a multitude of professionals looking out for the rights of a child we have the local authority social worker and their supervisor and their manager, and then there is the foster carer, for example, and their supervising social worker and of course their manager. There is the independent reviewing officer and of course their manager. Then once we hit the court arena, we have the children's guardian and then their supervisor and the entire hierarchy of Cafcass. That is a lot of people looking out for the child. Maybe as it should be. But is it fair? We are asking parents, often powerless anyway, often frightened and furious, to stand up to everyone else. This feels uncomfortable.

I have a pretty good grip on what is happening in practice across England and there are a growing group of children's social care services that understand this practice tension and do something about it. The child focus is just as strong but their practice locates the child within their family context and the family within their social context. They understand their role in mediating between private family life and limiting the worst excesses of state control. They work with families and build a culture that is kind, even when they decide that a child should be removed. Whilst the social and economic facts of a local area will influence dramatically levels of social need, and the influence of wider social policy will impact too, rates of statutory intervention are mostly determined by the value base of those doing the intervening.

In the study we found that there was a lower (but inconsistent) tolerance of diverse standards of parenting. We were not sure when exactly there has been this shift but it has happened. We noticed that the families subject to those thin, red line decisions were characterised by a collection of references to much lower level parenting concerns, for example, "*watching certificate 18 videos*", "*high levels of junk food*", "*providing children with crisps or chocolate for breakfast*", "*the living room smelling of smoke*", "*he uses this extra money to buy cigarettes*". There was also a tendency in the justification of those thin, red line decisions to use stock phrases to describe concerns: "domestic abuse", "*vulnerable to sexual exploitation*", "*poor parenting skills*", "*basic needs neglected*",

"*disguised compliance*", "*prioritises her own needs before those of her children*" - but much less description about the degree of seriousness attached to any of these descriptors, the degree of harm to the child in question or indeed why the circumstances described were significantly different to other families in similar social circumstances.

Many would argue that this earlier intervention and removal and lower level tolerance is as it should be - a standard of care and protection fit for the 21st century. But something else is happening too. The safeguarding system in England operates a triage system reflective of the fact that there are degrees of harm and degrees of risk designed towards only the most serious situations reaching public care proceedings. As local thresholds for applying to court has lowered, this has muddied the water. There is much less distinction between those children on child protection plans and those children subject to care proceedings. It seems this merger has taken place whilst no one was looking. Whether or not a family is subject to court proceedings risks becoming something of a lottery and increasingly so. This is not as it should be.

Taking a family to court to remove their children has to be the most draconian of our state actions and indeed necessary in many circumstances. But for the family justice system to work effectively and fairly, there should be clear blue water between those children who are brought into public care proceedings and other local children who have suffered significant harm or who are at risk of being so. But for there to be clear blue water between these two groups of families, this requires the local authority to be sufficiently equipped to support families and to manage the risk to children within their communities. This requires the right resource spent on the right things and a social work profession with the necessary knowledge and skill to practise confidently at all levels.

The study found that the services available to support families are not always sufficiently tailored to meet the needs of families facing court. Whilst some social workers lamented the loss of services such as family wellbeing hubs, youth services and parenting groups and others referenced the need for services used for "*propping up*" families and "*old fashioned support*", it is difficult to see how these types of services could effectively tackle the complexity of need and risk facing the children and parents in the study, in particular those families who were eventually separated. Others commented that sometimes referring to services such as domestic abuse perpetrator or addiction programmes had become more of a tick box exercise rather than having confidence that this was the right service or could realistically succeed. Furthermore, whilst many parents had specific social and health needs that may need, for example, treatment for addiction or therapeutic intervention to help with previous trauma or to help reduce violent behaviour, there were few examples of working with the family as a whole.

A national focus over the last 10 to 15 years on lower level early help services for lower level social problems with the honourable aim of trying to stop the trajectory of families into high level need further down the line has meant little time, focus or resource has been spent on developing services sophisticated enough to meet the needs of the families who do find themselves at the sharp end of the family justice system. By design, services are often neither (a) sophisticated enough to tackle the entrenched violence, addiction or family dysfunction (often across generations) which characterises many family problems which result in care proceedings; nor (b) designed to support parents with learning disability or enduring mental ill health, very often present in families who end up in proceedings. The study found that it is not that these types of services are no longer commissioned; they rarely existed in the first place.

As well as investing in community based universal or more targeted family welfare services, families that face court must have access to sufficient and effective services for high-level need and risk. Without these services, social workers have few options but to initiate proceedings, the red line is crossed and families find themselves on a conveyer belt into court and once in the court domain, it is very difficult for everyone, for the family to exit the system.

In the study, whilst 34 percent of children went home, a further 25 percent of the children remained within their own family networks at the end of proceedings. Historically, and in line with the principles of the Children Act 1989, care arrangements within family networks would have been facilitated by the local authority (of course many families did and still do make their own private family arrangements) when parents agreed that they were not in a position to look after their own children. Public proceedings were often avoided altogether. Local authorities saw this kind of facilitation as their core business and in line with the practice of partnership with parents and the No Order principle enshrined within the Children Act.

Concern has been raised for many years about children languishing in inappropriate care arrangements often facing sequential disruption and even further neglect and abuse. Most recently concerns have been raised about the possible inappropriate use of section 20 voluntary accommodation for long-term care arrangements (both because there was not always true consent of parents and there is not consensus that permanence can be properly established for a child through voluntary agreement). These growing concerns plus increasing political, public and regulatory scrutiny of children's social care and the care arrangements provided for very vulnerable children has led to a different (if not deliberate) expectation: that court is frequently seen as the only natural home for negotiations between family and state, with families properly represented and no stone left unturned.

It is true to say that local authority negotiations with families about alternative care arrangements can be messy, the finer detail left to chance, and inconsistent levels of financial and other support for families between and within local authorities frequently viewed as unfair. By addressing these important concerns, resurrecting the principles of No Order and partnership with parents, and viewing long-term voluntary accommodation and shared care (between extended family and state) as a valuable alternative to court, the number of applications to court might be significantly reduced.

We also need to pay attention to the pre-proceedings period. This offers a final opportunity to explore with family and their extended members, how best to resolve concerns about the care and protection of children without going to court. This is a formal and most serious process and is designed to offer absolute clarity to families about what needs to happen to avoid proceedings. But it is also a point of hope - every family gets this chance.

Whilst this pre-proceedings period is meant to focus on trying to prevent care proceedings as well, some social workers in the study said that the process is primarily used to prepare for court proceedings. Once subject to a pre-proceedings plan, families and practitioners alike find it very difficult to get off what they described as that conveyer belt into court. It was perceived by some practitioners as a compliance tool with a focus on the ability and willingness of parents to follow the plan with often too little reflection about progress in addressing parental concerns, whether the plan was the right plan and whether a different plan might work better. Social workers also said they were conscious that changing the plan halfway through could be perceived as a weakness of the local authority position later in court.

The pre-proceedings period should be resurrected as the key point of hope at which local authorities can work with families to develop long-term, sustainable plans for the children of concern. It is often argued that it is only once in court that families get the wake-up call that drives them to respond (and some parents do this really well) to the challenges of changing how they parent but with authoritative and confident practice it is perfectly possible for that level of change to occur without the need for court.

What happens now? Rarely have I seen such a consensus across the family justice system that something needs to change. Political and professional will backed by every sector leader who sits on the ministerial Family Justice Board. We have a growing and brilliant number of families who have been through proceedings and their advocates, whose voice is more readily heard and building influence. Families should be enabled to guide us more. This year, I am leading The Letter Project which will release the testimony of thousands of children and families that have

written to me over the years - to give those families a new and powerful platform. We have to listen harder.

The recently published Care Crisis Review led by the Family Rights Group, I think, is possibly one of the best examples I have ever seen of bringing together hugely disparate interest groups towards a common commitment to see change. That is no mean feat! I am seriously impressed with that one and I think Bridget would have loved it!

There is a distinct group of practice leaders in this country who are already changing practice across their services and the way we work with families in their local area, seeing rapidly decreasing levels of state intervention but ensuring those children who need protecting are indeed protected and permanently so. We need to see this happen everywhere. We need a new commitment and collective will to keep children with their kinship networks and support families to stay together, wherever possible, and without recourse to the courts. But I am searching for balance too. We equally need to recognise when enough is enough. When the trajectory for a child is clear, we need to act with speed, determination and resolve and I make no excuse for that.

Stronger family focused practice, better decision making and more sophisticated and tailored support services should create clear blue water between the standard of care and protection given to a child involved in public court proceedings compared to the care and protection of other local children considered to be at risk of significant harm. The legal principle of No Order should be more readily applied in practice. The use of voluntary accommodation should be reclaimed as a legitimate and respected support service to families for the short and long-term care of children. Shared care should be developed and incentivised so that, where safety allows, parents and extended family in partnership with the State are fully supported to look after children within their own family networks.

All of you here today are here because this matters a great deal to you. It matters a great deal to me too. I think we can change what is happening to families facing court because we have the power to do so and we should use it. Thank you.

THE CHAIR:

Isabelle, thank you very, very much for that lecture. It was extremely rich in content and you, in the audience, do not need me to tell you how important some of the things that you said are and will be as we move the discussion forward. It is a lecture that bears reading and reading again. I know,

and those of us who have given lectures such as this know, just how much work goes in to producing a 45-minute lecture of that quality and depth so thank you very, very much, Isabelle.