

## RESOLUTION CONFERENCE 2019

### KEY NOTE ADDRESS

Sir Andrew McFarlane

President of the Family Division

### LIVING IN INTERESTING TIMES

Despite the many issues which seem to divide our country, no one can doubt that we are currently living in “interesting times”. Although I will, in a moment, say something briefly about Brexit, my reference this morning to interesting times is directed specifically to Family Law. Irrespective of what may be going on in the wider political world, we Family lawyers find ourselves, once again, in the middle of change which is seeming to occur on all fronts. The Key-Note Address at this year’s Resolution Conference therefore provides a timely opportunity to offer you an update on the major changes which are currently being developed and which will have a major impact on every aspect of family law during the next 12 months.

At car boot sales it is, apparently, not uncommon to find, amongst boxes carrying a specific label such as “kitchen”, “bathroom” or “tool-shed” one labelled “box of odds”. Inevitably, given the wide-ranging canvas upon which this address is painted, it may well seem something of a “box of odds”, I hope, however, as I delve within it and produce various haphazard item, you will each find something of professional or personal value!

#### **BREXIT:**

As everyone will know the effect of the European Union (Withdrawal) Act 2018 taken together with the Withdrawal Agreement negotiated between the UK and the EU would have the effect of maintaining existing EU law in force during the transition period which is due to run up until December 2020. In that period the principal measure regulating jurisdiction, Brussels IIa, will remain in force in the UK. Although a recast

version of Brussels IIa is expected to be adopted in June 2019, that is not anticipated to come into effect until June 2022.

On the other hand, if this jurisdiction leaves the EU on a 'no deal' basis, the measures governing cross-border jurisdiction in Family Law will change, as Brussels IIa will cease to have effect on the day that we leave.

The Family Procedure Rules Committee 'No Deal' Sub-Committee composed of judiciary, MOJ lawyers and civil servants, and practitioners including representatives from Resolution and FLBA, has been considering, proposing, drafting and advising the MOJ on the amendments to the statutes, statutory instruments and Practice Directions necessary to implement a 'no deal' Brexit for Family Law. On behalf of the judiciary I would like to extend my very considerable thanks to your organisation and particularly to Eleri Jones and Daniel Eames who have assisted on the committee and more broadly by contributing to this work. It has been a genuinely collaborative effort and I believe the results of the group's work have done as much as could be achieved to prepare the Family Law ground for no deal.

The main SI's which have emerged from this process are

- Jurisdiction and Judgments (Family) (Amendment etc.) (EU Exit) Regulations (2019 No 519)  
  
(This revokes the EU law which was retained by the EU (Withdrawal) Act 2018 and introduces saving and transitional provisions)
- Family Procedure Rules 2010 and Court of Protection Rules 2017 (Amendment) (EU Exit) Regulations 2019 (2019 No 517)
- The Jurisdiction and Judgments (Family) (Amendment etc.) (EU Exit) (No. 2) Regulations 2019 (in draft dealing with Sch 1 Children Act jurisdiction)

There is a considerable amount of assistance for practitioners available in the form of guidance. This includes

- the Ministry of Justice guidance ‘family law disputes involving EU after Brexit: guidance for legal professionals’ published on 29 March 2019<sup>1</sup>
- the joint Resolution and ALC note to public law children lawyers in England and Wales of practical recommendations in the circumstances of no deal on EU exit of 26 February 2019<sup>2</sup>
- the joint Resolution and Law Society Note to Family Lawyers of practical recommendations published in January 2019<sup>3</sup> and the update of 21 March 2019<sup>4</sup>.

### **Increasing caseload in the Family Courts:**

Since becoming President I have spoken frequently about the increasing caseload currently being experienced in the family courts. Understanding and then addressing this unprecedented burden of work has been and remains my number one priority. In 2016 applications in public law children cases increased nationally by some 25%. Although there has been some minor variation, that new higher level has been maintained during the following 2 or 3 years. Applications for private law children orders, which radically reduced after the removal of legal aid, have steadily increased so that they are now at a higher level than before and, worryingly are still increasing; rising 2% year on year last year and by 9% in the last quarter of 2018 compared to 2017. These cases, which now typically involve at least one litigant in person, involve longer hearings and return to court more frequently; thus, in private law, the pressure on the court is not simply represented by a numerical rise in applications. The number of divorce petitions in 2018 was 8% up on the number in 2017, returning to the pre-2017 level. The number of domestic abuse remedy orders went up 1% on the year, but,

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<sup>1</sup> <https://www.gov.uk/government/publications/family-law-disputes-involving-eu-after-brexit-guidance-for-legal-professionals>

<sup>2</sup> [http://www.resolution.org.uk/site\\_content\\_files/files/joint\\_resolution\\_and\\_association\\_of\\_lawyers\\_for\\_children\\_note\\_no\\_deal\\_on\\_eu\\_exit\\_26\\_february\\_2019.pdf](http://www.resolution.org.uk/site_content_files/files/joint_resolution_and_association_of_lawyers_for_children_note_no_deal_on_eu_exit_26_february_2019.pdf)

<sup>3</sup> [http://www.resolution.org.uk/site\\_content\\_files/files/brexit\\_briefing\\_9\\_joint\\_note\\_jan\\_2019.pdf](http://www.resolution.org.uk/site_content_files/files/brexit_briefing_9_joint_note_jan_2019.pdf)

<sup>4</sup> [http://www.resolution.org.uk/site\\_content\\_files/files/joint\\_resolution\\_and\\_law\\_society\\_update\\_no\\_deal\\_on\\_eu\\_exit\\_march\\_2019.pdf](http://www.resolution.org.uk/site_content_files/files/joint_resolution_and_law_society_update_no_deal_on_eu_exit_march_2019.pdf)

again there was a more significant rise in the final quarter of 2018; 4% when compared to the same period in 2017.<sup>5</sup>

Even though next year judicial resources assigned to 'Family' work will, for the first time, be greater than those assigned to the Crown Courts, sustained and growing increases in workload of this order, across all the work that we do, can only be accommodated by radical reform to working practices and processes. In this regard, four substantial projects are in train to (a) digitise the entire court system, (b) reform practice in public law child cases, (c) reform practice in private law children cases and (d) establish the Financial Remedies Court. I will, in a moment, turn to each of these, but at this stage, I would like, if I may, to mention 2 short matters.

### **Telephone hearings**

The first short matter relates to without notice applications. Under the Reform Programme it is proposed that many without notice hearings may be undertaken over a video link. It seems to me that there is no reason to wait for the video think technology to go live in every court. The civil courts are now well used to telephone hearings and every District Judge has the experience of undertaking these hearings which are recorded through the BT system. It seems to me entirely sensible for it to become the norm in the Family Court for without notice applications, particularly non-molestation injunctions under the Family Law Act, to be conducted over the telephone. With the closure of many outlying courts, and the centralisation of much of this work in the bigger court centres, the gain for legal aid practitioners, who might otherwise have to travel 30 or 40 miles to undertake a short unopposed hearing, is plain to see. The decision whether or not to undertake a telephone hearing and, even if such a hearing commences, whether or not to adjourn for a face-to-face hearing, will always be under the control of the judge. I intend to encourage all judges to consider the use of telephone hearings in without notice family cases. Where such cases are allocated to magistrates, more careful consideration may be required, but, in principle, there should be no difference in approach.

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<sup>5</sup> <https://www.gov.uk/government/collections/family-court-statistics-quarterly>

## **Shorter Orders**

The second short matter relates to the length of court orders. The format of court orders is the subject of Practice Guidance issued, from time to time, by the President. Under the PLO the practice of substantial narrative orders was introduced with the laudable aim of providing an authoritative account of the current state of the case what could be found in one document.

Unfortunately, I have to report that a common theme of each of the court visits that I have undertaken during the past 6 months relates to the time that is now taken up by judges, court staff and lawyers in drafting court orders. As the current June 2018 Practice Guidance indicates, the use of standard narrative orders is “critically dependent upon the availability of modern, up to date, IT in the courts”, and the policy behind the guidance was based upon “the use of standard orders produced at the press of a button”. Unfortunately, it is clear to me that, for a variety of reasons, the necessary IT is either not available to, or is not being accessed by, those who need to use it with the result that the requirement to produce extensive narrative orders at the conclusion of every hearing has increased the burden on those responsible for drafting, rather than easing it. That this is occurring at a time of unprecedented workload has led me to the view that, for the time being, the requirement to produce a standard or narrative order at each hearing should be relaxed in cases relating to children. The “short order” pilot undertaken at the Central London Family Court has demonstrated the benefit of relaxing the requirement for longer orders in the current climate. I am therefore in the process of drafting Practice Guidance to this effect, so that, at all hearings in a children case after a first hearing, at which the ordinary narrative order will be required, it will be sufficient for the court order simply to reflect what took place at that particular hearing. In due course, once the necessary IT systems are readily available, it is likely that I will issue further guidance to revert to the standardised forms developed on Sir James’ watch.

## **The Court Reform Programme:**

The Court Reform programme is the biggest change project currently taking place across Government. The program is ambitious. It aims to transform the working practices of the courts and the judiciary from being almost entirely paper-based to a state of affairs in which paper will have no place. Having spent 7 years in the Court of Appeal, and therefore coming in to see the detail of the Reform programme from, as it were, the outside after it had already commenced, I have been both surprised and impressed by the effectiveness of the processes that are being developed and the degree of insight that is demonstrated by those in Her Majesty's Courts and Tribunals Service ['HMCTS'] who are leading the project.

Rather than commissioning an outside technical company to produce the essential software and hardware, HMCTS are employing the technical wizards in-house. Each project is led by long-standing HMCTS staff who, from my personal knowledge of some of these individuals in the courts in years gone by, know the "business" of Family Law inside out. These team leaders therefore know how the Family Court works, they know what litigants and practitioners need and they also know what the system and the judiciary require in order for our various processes to function effectively. These teams only proceed to roll out a stage in the development of the new electronic programs once they are confident that the previous stage has been bedded down and the prototype has been trialled on a small scale and is working. Whilst the result of this approach may seem, at times, slow, that detriment, if detriment it be, is minor compared to the benefit, which we are now seeing, of sound processes that, once they are rolled out, work well.

"For better or for worse", as the marriage service says, Family Law has been chosen to be in the vanguard of these developments. From mid-2018 litigants in person have been able to issue divorce petitions online. So far, some 35,000 have done so. This represents 55% of divorce petitions issued by litigants in person during the past 10 months. In contrast to the astonishingly high error rate of 40% detected in paper divorce petitions, the rejection rate for error amongst online petitions is currently 0.4%. 84% of litigants using the online process have indicated satisfaction with the process.

The pilot scheme for solicitors using online divorce has only recently started, but, so far, some 436 applications have been received from 20 solicitors in 17 different

locations throughout the country. The pilot contains both large multi-site solicitor firms and some small independent solicitors. The project team continues to use feedback collected from this limited rollout to refine and enhance the program.

At the same time, work is moving on to release the remaining parts of the divorce process, namely decree nisi and decree absolute, in the next few months. This stage will include legal advisers and judges being able to access the online service through the judicial interface, so that, rather than calling for 'the file' and rummaging through it, the judge will be able to see at a glance, on one screen, all of the information relevant to a particular case.

Once the process is fully up and running, you, as solicitors, will be able to log on from anywhere, at any time, and see the state of an individual divorce case as it moves forward. You will also be able to file documents and communicate with the court and/or the other parties remotely through the system.

The online divorce process is now administered in Stoke on Trent, at one of the two national Courts and Tribunals Service Centres ['CTSC']. This new national CTSC will only deal with cases in the online system; they will not engage with any paper-based cases. By the end of 2019 it is anticipated that the vast majority of divorce proceedings will be conducted online, or, if paper-based, will be scanned and converted to online, and will be administered remotely through the CTSC in Stoke.

It is impossible, having mentioned Service Centres, not to refer to the current divorce process in which each case is administered at one or other of 11 Regional Divorce Centres. On any view the Regional Divorce Centres have not worked well, indeed, some, particularly Bury St. Edmunds, Liverpool and Bradford have provided a wholly unacceptable service. I am, sadly, confident, that each member of this substantial audience will have had personal experience of delay and inefficiency, measured in terms of months rather than weeks, over the past year or more because of the move to centralisation in these regional divorce centres. As the Head of Family Justice, I can only apologise to you, and, more importantly, through you to your clients, for this unhappy state of affairs.

As a result of your experience of the Regional Divorce Centres you are entitled to have a healthy degree of scepticism over the prospect of yet further centralisation of all divorce work in the CTSC in Stoke on Trent. For my part, I too approached this change with a high level of concern given what has gone before. In all my dealings with HMCTS on this topic I have been extremely clear to stress the importance of the processes in Stoke standing up and working efficiently and without delay in a manner which is in total contrast to the current position in the Regional Divorce Centres. As I speak to you today, however, I do so with a fair degree of confidence that the new systems will indeed deliver that which is required of them.

That confidence is born firstly from the fact that the paper-based Regional Divorce Centres were developed prior to the present Reform programme and play no part in it. A paper-based system relies upon there being sufficient human resources to process the paperwork. Quite simply, as I understand it, there was a significant under estimate of the number of staff needed to operate the system when the Regional Divorce Centres were established. Once the Reform programme was in train, and the online processes were being developed, there was little scope for a further interim radical reorganisation of the temporary paper-based system. We have therefore had to wait, and put up with, the inefficient paper-based system until now.

Secondly, following a visit to Stoke some three weeks ago, I am confident that the new centre has more than sufficient capacity to take on this work.

Thirdly, whilst consideration of the divorce petition and the grant of decree nisi and decree absolute will remain judicial functions, much of the process itself will be automated within the digital divorce service thereby, as the statistics show, eradicating errors and the potential, otherwise, for work to be sent back and processed two or more times.

For the time being, we must wait and see. However, although the jury is still out, by this time next year (so far as divorce is concerned) it will be 'back' and, you can rest assured, that I shall spend the intervening time doing all that I can to ensure that the new system is both effective and efficient.



Other features of the new online processes are also developing. The Financial Remedy consent order pilot has now received over 250 applications from 17 solicitor firms. The new scheme already includes provision of automatic notification to solicitors, for example when a consent order is approved, and now includes automatic payment handling (in place of the manual process that had to be utilised in the early weeks).

Application forms in private law children cases are now available as part of a pilot to over half the DFJ areas in England and Wales with plans to extend further in the coming months. Applications in public law cases are being tested by several local authorities.

One aspect of the new online forms is the potential for the process to include “nudges” at strategic points to provide onscreen background information on the court process and to suggest possible alternative routes to dispute resolution which may be of particular value to litigants in person.

Finally, in terms of the Reform programme, a word about fully video hearings - that is hearings in which there is no physical attendance before a judge, and all participants (including the judge) are connected with each other over a video link. There is no expectation of there being a high take-up in terms of virtual hearings for Family Law cases. Some early directions hearings, particularly in Financial Remedy cases, may usefully be undertaken by this means. In addition, I do believe that the use of video hearings will be a boon to those undertaking without notice injunction applications under the Family Law Act. In my view, however, most Family Law hearings, whether they concern money, children or domestic abuse, benefit significantly from the presence of the key players, be they the parties or the judge, being in the same place at the same time; this applies as much to what happens in the corridor outside court as it does to the court hearing itself.

I have spent some time speaking of the Reform programme because of the significant impact that it will have on each one of us who works within, or interacts with, the Family Justice system. If you have not already done, you will have direct experience of the developments in your practice during this year. Please engage with the process and, where you spot something, whether it be good or bad, that you think should be feedback to either my office or HMCTS please do so; we can only learn as we move on and that involves us each playing our part to the full. At this conference, Adam Lennon, who

leads for HMCTS on the Family elements in Reform is here to demonstrate the new processes. Please spend time speaking to him and seeing the demonstration; if you do, I am confident that you will see why I am reassured by what is taking place and by the calibre of those in HMCTS who are leading the project.

### **Financial Remedies Court:**

Just over one year ago the Financial Remedies Court Pilot got underway in Birmingham. Although the scheme initially proposed for the new ‘court’ was somewhat wider, the pilot that has been introduced is essentially confined to a ticketing and allocation scheme similar to that operated with respect to children cases. The central aim of the Financial Remedies Court is for these important cases to be undertaken before judges who are experienced in the work and have an interest in undertaking it. Such judges, and no others, will be authorised to sit on Financial Remedy work. The pool of ticketed judges will include deputy district judges, district judges, recorders, circuit judges and deputy High Court judges. The aim is for judges at each of these levels to undertake some first instance work rather than, as has been the case hitherto, for the more senior judges only to hear appeals. So far as allocation is concerned, the level of judiciary and the length of the first appointment will be determined when an application is issued, rather than applying a one-size-fits-all approach as has previously been the case.

Although, because of the time taken to move from the issue of an application to a final hearing, it is still relatively early days, all the signs from Birmingham are positive. Concern that this new process may adversely impact on the allocation of judicial resources to the civil jurisdiction, have, happily, not been realised. I therefore gave authorisation for the pilot to be extended to some nine other court centres. Once other areas are ready to do so, and provided no adverse indications arise, I have indicated my willingness to roll the pilot out to all remaining parts of England and Wales.

Mr. Justice Mostyn, who has taken the lead on this project, is ambitious for its success. I share that ambition. As we move forward further benefits from this new bespoke court within the Family Court are becoming apparent. For as long as I can remember practitioners in ordinary cases, where “big money” does not even feature in the dreams of the parties, have cried out for authoritative guidance as to the general approach, or even the “going rate”, applicable in such cases. Active consideration is now being given

to harnessing the new computerised process and combining this with a revised Form D81 (the 'Form D81 Fan Club' is, I understand, a very small group!) so that, at the end of every single case, the system will have basic information as to the key financial components and facts, together with the outcome of the proceedings. The plan is for researchers to harness this substantial body of data in order to produce schedules or tables identifying the preponderant outcome in typical cases across a range of set variables. The goal is to provide family lawyers with a resource similar to that enjoyed by personal injury litigators when assessing the quantum of compensation following physical injury. We are keen to gain the interest and support of Resolution in this potentially game-changing endeavour.

The Financial Remedy Court is an exciting and overdue innovation. I wish it well and am keen to encourage its continued success.

### **Public Law Children Cases:**

The unprecedented and unexpected 25% rise in the number of applications for care or supervision orders made by local authorities in 2016 has been sustained, subject to modest levelling off, in each succeeding year. I have, since becoming President, spoken regularly of my profound concern about the impact that this unsustainable workload of important and worrying cases is having upon the system, and, more particularly, the well-being of all who work within it. I spoke at length on the subject in the Keynote address given to the Association of Lawyers for Children conference in November 2018<sup>6</sup>; I do not intend to return to the subject at any length on this occasion, preferring, before this audience, to focus upon the similarly worrying position with respect to private law disputes between parents about their children.

I will however, if I may, spend a very short time drawing attention to what has occurred in this area since last November. At that time, I and others had identified three key areas in and around the court process that might benefit from closer scrutiny. They were, firstly, the pre-proceedings process undertaken by a local authority before it gets

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<sup>6</sup> <https://www.judiciary.uk/wp-content/uploads/2018/11/Speech-by-Rt.-Hon.-Sir-Andrew-McFarlane-Association-of-Lawyers-for-Children-Conference-2018.pdf>

to the moment when an application under children act 1989, s 31 is issued. Secondly, the need to reclaim and reinvigorate CA 1989, s 20, so that where it is appropriate for a local authority to accommodate children with the agreement of their parents, this may take place without the need to instigate court proceedings. Thirdly, to question whether the rise in the number of orders made under which a child, at the conclusion of care proceedings, either returns to parents or to another family member, often under a care or supervision order, indicates that the threshold for intervening in the family has fallen to a lower level than had hitherto been the case and/or whether the 26 week deadline imposed on care proceedings might be encouraging courts to make a final order at a stage when the child's welfare would otherwise require a further period of assessment under continued interim orders.

Since November, a "deep dive" by a team drawn from the MO J and DFE has, independently, confirmed the basic analysis described in my November address and summarised above. More recently, the Family Justice Council conference, and particularly the Bridget Lindley Memorial address by Isabelle Trowler<sup>7</sup>, the Chief Social Worker, together with the talk given by Stuart Gallimore, Chair of the Association of Directors of children, provide a detailed and interesting analysis on the question of whether there has been a lowering of the threshold for social work intervention in families, so that children who would not previously have been brought to court are now the subject of proceedings - both speakers suggest that this is indeed the case.

Since October, a 30 strong working group, under the chairmanship of Keehan J, have been considering the potential for reform in relation to public law children cases. Local authority solicitors and those in private practice are well represented on this group. An interim report will be published in early May. Initially, this will be seen only by the lead family judges across England and Wales at the President's Conference in mid-May, but, thereafter, it will be widely circulated to all interested groups for consultation. I am very grateful to the work of this group and I have been impressed by what I have thus far seen in terms of the depth of their deliberations and the scope of their work.

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<sup>7</sup> <https://www.judiciary.uk/wp-content/uploads/2019/03/bridget-lindley-memorial-lecture-isabelle-trowler.pdf>

### Private Law Children Cases:

For very many years I have heard it said that “only 1 in 10 couples” apply to court to determine the welfare arrangements for their children and that only 1 in 10 of those (i.e. 1% of the whole population of separating parents) get as far as a fully contested hearing. I have never accepted either limbs of this assertion. During the Norgrove Family Justice Review I repeatedly asked for data on this topic, but none was forthcoming. Recently all this has changed, largely as a result of work done by Teresa Williams, the Director of Strategy at CAFCASS. Drawing on other available data, Teresa has identified the following broad cohorts:

- There are around 8 million families with dependant children in England and Wales;
- Some 130,000 couples with dependent children separate each year;
- Of these, 50,000 end up in private law court proceedings.

These figures, which indicate that around 38% of couples need to go to court to resolve disagreements over how they should care for their child post-separation, are a far cry from the previous comfortable urban myth based on a figure of 10%. It indicates a major societal problem, with nearly 40% of parents unable to sort out the arrangements for their own child without the need apply for a court order.

From my perspective, which I anticipate is the same as that of any family lawyer, magistrate or judge, I consider that the disputes that parents bring to court will only very seldom involve an issue of law. They are, instead, disputes that arise from a breakdown in the key relationships within a family and, in particular, between the child’s two parents. The law, which has been in place for 30 years since the passing of the Children Act 1989, could not be more straight-forward: each parent has full parental responsibility for their child, both before and after separation. Where the family is split, it is the responsibility of the parents to work together, despite the breakdown in the adult relationship, to make arrangements for the child. In this, the key word is ‘responsibility’. Where parents separate, they continue to have a duty to meet the needs of their child. Those needs are likely to include the need to maintain a meaningful

relationship with each parent. In this context, I cannot resist the temptation to quote from one of my own judgments (thereby breaking, at an early stage, a personal “resolution” of my term of office!). In *Re W (Children)* [2012] EWCA Civ 999, I said:

“In general terms, it must be the case that where two parents share parental responsibility, it will be the duty of one parent to ensure that the rights of the other parent are respected, and vice versa, for the benefit of the child.”

And later:

“Parents, both those who have primary care and those who seek to spend time with their child, have a responsibility to do their best to meet their child’s needs in relation to the provision of contact, just as they do in every other regard. It is not, at face value, acceptable for a parent to shirk that responsibility and simply say “no” to reasonable strategies designed to improve the situation in this regard.”

In some cases, the breakdown in the parental relationship may have dangerous consequences for the children and/or adults involved. In such cases resolution of parental disputes outside the court system may be neither possible nor safe. Where the facts justify such an outcome, it is likely to be necessary for a court to make orders to protect the children and the adults from harm. Whilst such cases, sadly, represent a sizeable number of those seen by the courts, they fall a very long way short of accounting for the total of over 50,000 private law children applications lodged last year. It is my personal estimate that at least 25% or 30% of these cases do not include any need to protect the physical or emotional safety of the children or parents; they simply represent a failure by the parents in discharging their responsibility to agree on the arrangements their child; *their* child, not the court’s child or the judge’s child.

Cases of straightforward relationship dysfunction, not involving abuse or a need for protection, should not need to come before a magistrate or judge for resolution. Indeed, because, for this group of cases, the issues concern matters of emotion and psychology, a court is most unlikely to be the best place to achieve any lasting resolution. The court, with its clunky legalistic approach will undoubtedly, in the end, produce a result which may then have to be imposed upon the parents, but, I would

suggest, for this substantial group of cases, the court process is not one that either adds value to the welfare of the child or is in any way beneficial for the parents. In some cases, it may simply provide a pitch and a referee for them to play out further rounds in their adult contest.

Although cost is not a determining factor, it cannot be ignored. The cost to the State of court buildings, court staff, judges, CAFCASS, local authority social workers (where they are involved) and Legal Aid (when that is available) is very substantial. Apart from visiting a GP or attending A and E, I can think of no other government funded facility which is available all-comers, after the payment by some of a modest fee, and which continues to be available, with the provision of social work support magistrates and judges, unless and until the two parties either reach an agreement or, following a protracted process, the court decides what the outcome will be.

Whilst the Family Court may be seen by some to be a necessary avenue of resort, it plainly does not generate a high approval rating from its customers. I am confident in imagining that every single MP will hear complaints about the family courts on a very regular basis. In addition, communications that I have had, both from individuals and from organisations such as Women's Aid and Families Need Fathers, indicate justified criticism from these interest groups of the family court process.

To sum up, using the Family Court to resolve straightforward, non-abusive, relationship difficulties between parents who separate is unlikely to be an effective course to follow, costs a great deal of money and is not seen, by many of its users, to be working effectively.

To my mind, **there has got to be a better way** of assisting those couples who need some help and support at what is plainly a difficult time for them and for their children. The task of identifying, developing and then funding a better way to achieve good enough co-parenting between separated parents is a matter for society in general, policymakers, government and, ultimately Parliament; it is not for the judges. My purpose today is, therefore, simply to call out what is going on in society's name, and at the state's expense, and invite others to take up that call.

What, if anything, arises from the exhortation that I have just made will plainly not produce change in the current time scale. There is therefore a need to lower our sights and look at what those of us within the system can do to improve what is provided for parents when they do turn to the court, and, at the same time, enhance the prospects of the parents resolving the issues themselves without getting as far as a contested hearing.

In that regard the “cavalry”, in the form of a 24 strong working group on private law children cases chaired by Mr. Justice Stephen Cobb, is hoving into view. The group has been meeting very regularly over the past three months and is, like the public law group, due to produce an interim report in early May which, after consideration by the leadership family judges at the Presidents conference, will be circulated widely for consultation.

The working group’s discussions have led them to the view that they would ideally like to start from scratch with dispute resolution for separating parents, with a much keener focus on a ‘solutions-based process’ engaging a ‘dispute resolution alliance’ of local services with court reserved only for those cases which absolutely have a justiciable problem. That is a view that entirely concurs with my own. There is a need for wider public education about how parents should separate in a child-focused way; and the damage to children of parenting disputes post-separation. For significant reform to be successful, any public education programme would need to be effective. In the meantime, or in the alternative, the group is trying to incorporate some of these features into the current CAP model and, whilst the group’s work is still ongoing, it is possible today to share with you a list of their objectives which are:

- To divert more cases away from the court
- To offer more assistance to families at an earlier stage of the process, before views become entrenched, and delay in resolving the dispute starts to influence/determine the outcome;
- To triage cases more effectively when the safeguarding information is available;
- To accelerate simple cases to a swift decision;
- To case manage more complex cases more effectively



- To manage ‘returner’ cases differently from fresh applications
- To make the processes simpler to follow; this may involve changing some of the language and acronyms.

In terms of specific recommendations, we will all have to wait for the interim report, but it is possible, at this stage, to identify the direction of travel, which is to frontload the experience of parents, in cases where there are no safeguarding or protection issues, so that, instead of seeing a magistrate or judge, they are exposed to a range of interventions aimed at managing their individual expectations and maximising the opportunity for settlement. The suggestion is that there should be a dispute resolution stage after an application for an order has been filed but before the formal court process commences.

The current requirement to attend a Mediation Information and Advice Meeting [‘MIAM’] is widely seen to be bypassed easily by those who should be required to attend. Thought is being given to requiring both parties to attend MIAM in every case and making it harder to avoid that requirement.

Thought is also being given to requiring parties to meet with a CAFCASS officer during the new dispute resolution stage. Other interventions, such as provision of a SPIP [‘Separating Parent Information Programme’], might be deployed at this preliminary stage.

More generally, the idea of establishing a triage process which would allocate cases on to one or other of three different “tracks” is being discussed. Track One would be for simpler cases, where there are no safeguarding issues, but the parties require a resolution without a section 7 report. Track Two would be for all other cases and would proceed through a recognised case management procedure. There would be a third track for ‘returning’ cases which have already been before the court on earlier occasions.

I wish to stress that what I have described is very much ‘work in progress’ and we must all await publication of the interim report to see the detailed shape of what may be proposed.

## **Conclusion**

You will see why I say that we live in interesting times. They are also most important times. The development of the law and practice of Family Law has always been cyclical. One impetus or another may spur change and reform, which is then allowed to bed in for a period before the next cycle begins. It seems to me that we are very much at one of those moments of change. What is striking is that the need to change, and, indeed the focus of any proposed changes, is seemingly agreed and accepted by all those who are involved. As I have tried to demonstrate in discussing the four areas of Court Reform, Financial Remedy work, public and private law children, there is really no part of the Family Law world that is being ignored in this current process. A time of flux is a time when ideas may be influenced and improved for the better. I am very keen indeed to engage with those of you working in the field so that you may feel able to offer your ideas and your help in one or more of these various projects. When, in a year or so, this all settles down, we will live with the resulting processes for some time to come thereafter. It is crucial, therefore, that we get it right, or as 'right' as we can now. Please help us. It is certainly a time that is not without interest! Thank you.