FAMILY JUSTICE COUNCIL – 13TH ANNUAL DEBATE

Motion:

"Do separating parents need the Family Court?"

on

Wednesday, 4th December 2019

SIR ANDREW McFARLANE (CHAIR):

Thank you for agreeing to come. Thank you for turning up on time and being here. It is a privilege to be here. It is great fun, and those of you who were here about 20 minutes ago, just before the sun actually went down, we got a glimpse of the hallowed turf, and these pictures round the room are great, but I never thought that I would appear at the Oval in front of the stumps with Alec Stewart behind me and this is a moment I am enjoying at the moment. So, well done, Paula and Daphna, at the Family Justice Council. I will thank them at the end but just choosing the venue, setting it up, getting you all here, takes an enormous amount of work and so I am very, very glad that they are on board and they have done so well to get you all here.

The motion, I hope, is topical and interesting, I certainly think it is, "Do separating parents need the Family Court?" We are very privileged to have four distinguished speakers with us this evening. I will introduce each of them in a bit more detail when it is their turn to stand up. Mavis Maclean, who is a Senior Research Fellow in Law at Oxford will be well-known to very many of you as being someone who has been involved in this work now for a long time, and who continues to make a vibrant and very active contribution to the thought behind all that we do. Jane Robey, Chief Executive of the National Family Mediation, will be speaking after Mavis. Mavis is for the motion. Jane is the first speaker against it. Olive Craig, who is the Senior Legal Officer at the Rights for Women group will be effectively the seconder for the motion and, finally, Heather MacGregor, a retired District Judge from the Principal Registry of the Family Division, and still sits as a Deputy, previously a family barrister, will wind up for the speech against.

Each of the speakers is determined to stick to their 15 minutes. There is not a clock that any of us can see in the room, so I will have a fit of coughing at about 14½ minutes in, because part of the value of these evenings is the question and answer and the debate between all of you, and we are keen to get to that soon after six o'clock, so that we can have most of the final hour spent on that.

So, I won't take up any more time other than to introduce Mavis in a bit more detail. Mavis, I am now going to say, has been involved in this work since 1974, and there isn't an area of Family Law that she hasn't been involved in, researching, and actually making a contribution which has led to progress in what we do. Certainly, on the Family Justice Review, David Norgrove and the panel met with Mavis I think at the very first meeting that we had in a small room in the Methodist Central Hall, of all places, and our contact with her carried on throughout the work of the review and in every way she has continued to contribute. You will see from the CV you have got that just in recent times she has been a very busy author of books, which are bang on the topic, bang up-to-

date with what we are thinking about. So, it is a privilege and a pleasure to introduce Mavis and ask her to speak for the motion. Mavis, over to you.

MAVIS MACLEAN:

Thank you, Andrew, and thank you for inviting me. I do have a watch which I will peer at carefully, and our question is, "Do separating parents need the Family Court?" Well, my short answer is yes. I mean, of course, a sad yes. I would be delighted if they didn't, just as I would be delighted if nobody needed the hospital, the fire station or the police station, or any of the other things that we rely on when we are in difficulty. If every parent undergoing the stress of separation was able to be tolerant and flexible and work collaboratively for the sake of the best interests of their children, then they wouldn't need the Family Courts, but as we all know that is not the case. As an academic, I have to apologise for not being a practitioner, for being horribly ignorant about many, many things, so forgive me, but, as Andrew said, I have been around a while and seen a bit of this and that. So, I will bother you with some ifs and buts and airy fairy plans, and also I would like to mention what is happening in two or three other jurisdictions, which I think might be helpful.

Well, if we start from the beginning: we live in a democracy under the rule of law and we know what courts are for because the Supreme Court told us in one of their wonderful Ladybird-book-type clear sentences in the UNISON judgment a couple of years ago. Do you remember? They just said, "Courts exist in order to ensure that the laws made by Parliament and the common law created by the courts themselves are to be applied and enforced." Well, that says it, doesn't it? Fine, quite so. And we are very fortunate in having a particularly civilised legal framework for this particular bit of the law in the Children Act, with welfare paramountcy having stood the test of time and the test of some quite cross onslaughts now and again. Brenda Hale reminded us all of that, very elegantly, just a couple of weeks ago at her Scarman Lecture but nevertheless there are the extremely serious concerns about the number of applications to the court about child arrangements, despite the availability and in fact the energetic promotion of alternative methods of dispute resolution.

Why are we so concerned about this? Are we concerned because of the cost to the state? Are we concerned because of the cost to the parents, particularly in the post-LASPO world, or are we concerned about the impact of the court experience on the welfare of the children? Very probably all three, but in any case the courts are clearly under extreme pressure, and particularly because they are operating under adversarial process, often without the legal representatives who used to oil the wheels. Could parents be diverted? Well, I think we should start by trying to interrogate the policy angle a little bit further. What is the government trying to achieve in this area of Family

Justice? One thing that helps me to think about it is looking at the way that the department straplines about the purpose, function, and scope of the Family Justice system, and the way that these have changed over the years. I think it is illuminating when one is trying to get through the muddle of how things have developed.

When I first arrived at LCD in 1990, just after the Children Act, the aim of Family Justice was quite simple. It was, "Protecting the vulnerable". Well, I find that clear, honourable, but potentially it can be expensive because it implies an active approach, careful examination of welfare issues. Then, as we came up to David Norgrove's enquiry, 2009/2010, the focus changed from the individual in need to looking at how Family Justice was working as a system. The strapline then became, "Promoting fair and informed settlement", and by this time ADR was highly visible and very exciting. Well, now, with austerity, I am sure any of you who get communications from the department will have seen this many times, we have simply, "Advancing and promoting the principles of justice". It is quite hard to argue with that, but on the other hand it is quite conveniently abstract and does not require a fixed budget.

I think the difficulty, as we all know, is how different family law is from other parts of the law. It is about the future of vulnerable third parties and it is not just about justice, it is about welfare. We have a legal framework which puts the children's welfare first but how can we deliver? Well, when I first joined LCD in 1990 I was surprised by the level of hostility towards the legal profession in policy circles. The increase in the Family Legal Aid bill was widely attributed to the business needs of family solicitors, who were paid by the hour. So, I went to have a look and what I saw in practice was a clear culture of negotiation to settlement, skilful management of client expectations and solicitors whose earnings were dependant on case volume, not on fighting individual battles to the death. It was actually the sharp increase in divorce which was affecting the bill.

At the same time, government was getting very excited by the new approach, ADR, family mediation, which at the time was not only very low cost, partly thanks to voluntary input, but also clearly good for people, encouraging individual responsibility and the development of conflict resolution skills. There is a technical term for a policy which saves money and is good for people and it is known as "a silver bullet", and here it was. But in this jurisdiction, as in many others, Germany, France, Spain, the take-up of mediation has remained consistently low and the government's expectation here that after LASPO mediation would at least in part replace the work of the family solicitors has not been fulfilled, as was acknowledged in the LASPO implementation review. In fact, our research in Oxford had led me a while ago to question the potential for broader impact of this kind of intervention, which is clearly highly-skilled, clearly of great benefit to many people, especially if accompanied by legal advice, but I was always worried about the possibility of

it meeting all the needs of all those who used to approach Legal Aid solicitors. People tended to be seeking, first of all, information about what most separating parents do, as a sort of proxy for what is fair, and then they are looking for advice as to what the options are and which one would be best for them and their children, and then for support in taking the next step. Mediation doesn't do all of those and also demands quite a lot of hard work from the client, which some parents at separation are not able to engage with.

The most recent policy silver bullet has been digital, as you all know. I love the way it is just "digital". It is not always digital-something, it is just "digital". Again, this approach can help with some things and not others. In France, where the Family Courts were in the sort of state that we are in now, a while ago, digital administration was introduced and was extraordinarily helpful in leading to what they call the dematerialisation of the courts, which I think it is wonderful. It sounds like Doctor Who. You know, you sort of go like this and they all disappear in a puff of smoke, but actually it just meant no more paper. So, that was a huge success but the attempts to achieve dispute resolution online, which reached their height with the Rechtwijzer, which you probably remember, came to a very sticky end. It was hoped, and a lot of Legal Aid money was put into it in the Netherlands, that it would cope with the majority of these kinds of disputes but in fact only six percent of separating couples ever used it. About half of those managed to reach some kind of arrangement but then the arrangements themselves were not accepted by the courts for very simple reasons. You couldn't actually be sure that people were who they said they were online, and if you are making a property division, you do actually need to know that Mr X is Mr X.

Well, we are now at a turning point, as evidenced by this debate, and I think there is a huge need for some very careful evidence-based, dare I say it, analysis and one good thing you might like to know, good news about the Ministry of Justice is always nice to share, there is a new unit set up, 20 staff so far, it is called EEE. I get the order wrong but it stands for Experiment, Evaluation and Engagement, serious thinking. So, there are some thoughts to look forward to to come from there, I hope, but in the meantime I think we might learn something from other jurisdictions, about what courts are for? What do you want from a court? What can it do? What can't it do? Clearly, we are asking too much of our courts here at present.

I want to give you three examples from other jurisdictions, very quickly. In Australia: after investing heavily in providing alternative family dispute resolution, they found a continuing high level of demand for courts. So, the Australian Institute of Family Studies was asked to have a good look at the people who persist in using the court and what kind of people are they? Are they simply bad-tempered, malicious, whatever, or what? A very careful study, I can give you the reference if you need it later, found an extraordinarily high level of mental illness. 59 percent of the court users, the

Family Court users in Australia, had some form of mental health issue. There was also alcohol and drug abuse, high levels of domestic violence, as we think about here too. So, these people, separating parents are unlikely to be at their best if they have not been able to manage a relationship, not been able to manage the problems which arise from separation, or prevent them escalating into a conflict, in spite of help from family and friends, in spite of help from advice services, or even from professional practitioners, especially if there are language problems or literacy problems. These people need help. I think that if we understood more about the characteristics of these court users, we might think twice about simply making it harder to get to court, and we might try to think more about how the courts could contribute to better outcomes for those who I think we should think about as problem families with vulnerable children, rather than simply litigants.

My second example, in Germany, the Family Court is local and acts as a hub for the counselling services which are free and available and ADR also can be accessed. The judge is asked to resist positioning by parents based on their legal rights in respect of the child. Instead, he or she is asked to act as a temporary supervisor with a residual power to make decisions, and the court does not work towards a final decision in a conflict. It offers a binding setting for alternative dispute resolution for parents who are accompanied until they reach that decision.

One minute for my last example, which is really exciting. Denmark has always used administrative procedures for dealing with parental disputes. They have no Family Court but as of the 1st of April this year, (1st of April seems to be a popular date for introducing drastic legislation, doesn't it, the LASPO came in on 1st of April)? On the 1st April they closed down the former administrative agency and opened up... (my Danish isn't very good), the Familieretshuset which is the House of Family Law. It is an administrative agency, but on the same day, for the first time, they set up a Family Court. A parent needing help is required to approach the Family Law House in a digital form and will be assigned one of three tracks: green, if they only need information; amber, if they might need counselling to curb the developing conflict; and red if there are clear risks associated with violence or abuse or whatever and the house, as opposed to the court, has authority to make decisions in some matters. These decisions can be appealed to the court and it must always bring things to the court if it is something which will have a long-term, major impact on the child's life. Children can access the Family House but in spite of this non-traditional administrative work, they have finally decided that a court is necessary. But instead of having it freestanding, as we do, it works with this agency, so you travel between the two. You might or might not need a court but you are under the same umbrella.

So, for my last two sentences, I suggest that conflicted parents are distressed parents with problems which have become disputes, and that we should avoid talking about diverting them away. That looks to me like rejection, and I am much happier if we think about trying to build on the strong central position of the Family Court in a more informed and supportive way, looking for resources which might enable cooperation between the court and other non-court, but court-related, agencies. When you walk into a hospital you do not know whether you need a plaster on your big toe or major surgery, but you are within the hospital and you are not thought to be foolish or bad if you think you need major surgery but if you do only need a plaster on a toe, someone will sort it out for you. So, three cheers for the CAP review, which I think is beginning to move in this direction.

SIR ANDREW McFARLANE:

Thank you very much, Mavis, for getting us off to such a well-informed and interesting start. Against the motion now, Jane Robey, who is the Chief Executive of National Family Mediation, a post that she has now held for 15 years and she has been a Family Mediator for 23 years. Before that, she worked in Probation, Family Court Welfare, Cafcass, and Child Protection, so she is well-placed to talk both from a knowledge basis of working in the courts but also working with families outside the court, through the regime of mediation. Jane.

JANE ROBEY:

Well, thank you. Well, I am on your agenda for today as against, and I think you will interpret that as me being here to say separating parents definitely do not need the Family Court. Well, let me temper that. For separating parents, the Family Court is not the right place but for some it is the necessary place. So, in this presentation, I want to take you through my contention that the Family Courts are not the right place for separating families, that our culture has elevated their role in separation way too high and I want to talk you through two case study examples that highlight this and conclude that we need culture change to stop Family Courts being seen as the be all and end all.

So, I think a word you will have heard a lot of this year is the “backstop”. You will remember that word. Perhaps it will be word of the year. That is what I think the Family Courts should be for separating families, a backstop, a last resort. It is my contention that nowadays in far too many cases the court has become more than the backstop that it needs to be and I want to focus on why the Family Court is not the right place and why it is overused and over-relied on. So, I want to tell you about some of the issues that separating families who come to the National Family Mediation

find themselves having to face. So, some of the issues that families face, it is things like who takes Jemima to her dental appointments? Who is going to Jemima's parents evening? Which set of grandparents is going to see Jemima on Christmas Day, and can Jemima go on holiday with her dad? Hands up here, anybody, who has been dealing with Christmas contact issues in the last two weeks? Yes, exactly. Are these legal problems? Well, no, in essence, they are not but they have become perceived as a legal problem because separation and divorce is now framed as a legal problem or a series of legal problems, when, rather, separation and divorce arises in fact because of a series of human problems, a series of relationship problems which in some cases have legal elements to them.

I know from experience that the Family Courts can not only fail to assist separating couples, it can actually get in the way of resolving their issues. So, I have got a couple of case studies here that I want to take you through. So, in 2015, NFM ran a DWP funded programme, which saw mediators working in Family Courts in three pilot areas. It helped parents who had become entrenched in court processes to suspend legal proceedings and meet with mediators to help them negotiate long-term arrangements for children, property and finances. The mediators coached parents to improve their negotiation skills and communicate more positively. The case that I want to tell you about was of parents who had separated before the birth of their ten-year-old child, had been in court 55 times since the child's birth, had a court-appointed guardian, due to parental conflict, with allegations against dad that included drug-taking, sexual abuse and domestic abuse. The parents attended a separate MIAM meeting. I am using acronyms here but I am assuming everybody knows what these are. It is a Mediation, Information and Assessment Meeting.

So, the mediator had an opportunity to talk about how mediation might work as part of our standard practice and nothing more at that stage. If the couple agreed that they wanted to try mediation, they were then offered another separate meeting and the purpose of this meeting, the coaching session, was to provide an opportunity to look in more detail at their conflict, their concerns and anxieties and help them both separately to work towards being able to negotiate with their ex in the upcoming mediation session. They then proceeded to joint mediation, where the mediator used the knowledge learned in the separate sessions to steer the parties through their conflict to enable them to reach agreement. Now, the agreement reached in this case was so strong that when the parents returned to court, they were able to agree with the judge that they didn't in fact need an order to support their plans.

My time won't allow much detail, but I will draw your attention to the evaluation process of that programme and we have a system where at the start and end of the programme they were asked to evaluate a number of things and the outcome in this particular case was quite enlightening. So,

by the end of the intervention, conflict levels had reduced from nine and ten, respectively, to zero for both. Communication had soared from nought and one to seven and nine for each of them and perhaps the most striking thing about this was when asked how much do you want to work together, at the end, both scored ten out of ten, but even more telling was that at the outset, at the first evaluation, both of them said to the same question that they were eight and ten out of ten, respectively. They wanted to work together but the Family Court in this case seemed to get in the way. So, I would invite you to consider what would have happened in this case if mediation had not intervened? This separated family did not need the Family Court and there are many other cases from this intervention programme, over 300 families were helped at the at-court mediation project. Three-quarters reported reduced conflict and stress and an increase in positive communication. The top-line takeaway was the couples who had become entrenched in court conflict can, with the right help, find an exit from the drama and move on in a positive way. The problem, which is a perennial one, is that alternative services, especially mediation, are not offered routinely and courts are seen as the safest option because at least they have powers. If it is legal, it must be strong, when the truth is those of us working near the courts know that that is not in fact the case.

Now, that high conflict example might not float your boat and might be untypical. So, here is my second case study and one which provides lessons for about half the population. It is a completely different situation but one that demonstrates how limited the Family Court can be and whether you instinctively feel for or against the question of this debate, you have to acknowledge that in any case court powers are very restricted and limited. So, this is a case of a cohabiting couple and we all know that the law treats cohabitees differently to married couples. It is a case of Emma and Joe. They have a 20-year relationship, with two children, aged ten and eight. The family home had been bought in Joe's name 15 years ago, partly funded by Joe's inheritance, part-mortgaged. Joe was earning about £45,000 a year plus a pension and Emma was not earning and was a full-time mum. Now, if they had been married, Emma would be likely to receive spousal maintenance until she can find work. She could share Joe's pension. She would share the home equity, depending on her housing needs, but at least 50 percent, but as they cohabited, unless she could show an intention that Joe would share the property, it is unlikely Emma would get anything from it and Emma had no right to a share of Joe's pension and she had no right to support in her own right. In this case, in fact, it was in the precincts of the court, with both parents represented, that the barrister dropped the bombshell that Emma had no rights and put Joe in pole position but Joe actually wanted to do the right thing by his children and his children's mum and the court couldn't help. So, Emma and Joe decided to try mediation and in mediation they reached an agreement. Emma got half the equity, less Joe's original deposit, and a memorandum of understanding was

drawn up in mediation and Emma's solicitor made it legally binding by a deed of separation signed by them both. The Family Court was actually of no use to Emma, or Joe, for that matter.

So, that is just one case and as I am against I would pick something like that, wouldn't I? But we know that some 48 percent of children in our country are born outside a marriage and in most cases we also know that most people do not know that married and cohabiting people are treated differently by the law and the courts. Now, that argument for reform is different from the topic today but it is probably as pressing and within the next few years we are likely to find more kids born outside of marriage than within it. So, is the Family Court going to offer any help to those children given the circumstances we are in? No. I would contend that the Family Court is not really fit for purpose, at least not fit for the purpose our culture has assigned to it in separation and divorce. In most cases, the court has become more than the backstop. It has become first base. It is a deep problem about our country's separation and divorce culture that frames it as a legal issue, defaulting separating couples to the courtroom because there are no other options or joined-up services available to deal and seal a divorce.

Turning briefly to some very current and topical issues, promoting dispute resolution services, mediation and the MIAM has been categorised as a failure in the recent CAP2 review but I actually see it more as a system of failure than a failing of mediation because all the legislation and intent to make better use of our out-of-court services, especially mediation, is already in place. It just isn't being properly used. I would also just make the point that as long as one person only attends a MIAM as a means of accessing court, mediation is never going to happen, let alone prove its worth. I would argue that there are services out there to support separating couples, but there is resistance from established practice to consider using other services. The resistance, I think, is caused by under-resourced, over-stretched existing services that don't have capacity to consider alternative ways of working and yet to continue on this path will surely bring about the collapse of the whole system.

I also think nothing very much is going to change in the near future as a result of the perpetual churn in politics and *[whispers]* Brexit and, as such, those of us working in the system have to make more of our respective skill sets and apply them strategically to make the system work better. We do need a culture change if family breakdown, divorce and separation is to be managed differently and I think the court, as the most powerful and authoritative institution, should be leading the charge in the culture change because we have to work with what we have got. It starts with a much more robust approach to gate-keeping and the MIAM exemption and ends with judges being prepared to order, as a contact activity, attendance at a MIAM, something that is seldom used. It also means bringing to life and reality the ambitions of the Family Procedure Rules, where diversion from court

should be considered at every opportunity. I think that if this approach were adopted, we would quickly see courts become the backstop, the place for those who really need it, and, don't get me wrong, I think every member of society has the right to have access to the legal system and justice and the justice system definitely has a role to play but as a backstop, a recourse, and not first base. So, do separating families need the Family Court? Our culture says yes, but I think in most cases it shouldn't be that way.

SIR ANDREW McFARLANE:

Thank you, Jane. Well, the first innings is over. Both teams acquitted themselves, you feel, very strongly. It is evenly matched. Depending on what happens next, we might even get as far as a "super over" at the end but, fear not, Olive Craig is now coming into bat. Olive is the Senior Legal Officer at Rights of Women, specialising in family and criminal law and she is well-placed to do that. She has been a qualified solicitor for many years, practising in crime and family, but now she delivers legal advice to women on the Rights of Women family law advice line and she sees and hears from them at the sharp end, both with their aspirations and their problems but I suspect also their experience of trying to sort things out without the Family Court. Over to you, Olive.

OLIVE CRAIG:

Thank you. So, I am going to come in and fill in some detail, heading off from what Mavis has already said in favour of why separated parents need the Family Court and I am going to think in particular about why it is that we are talking about this? So, we have heard a lot, in particular in recent years, about increases in applications to the Family Courts, a crisis in the Family Courts and we need to think a little bit about what is the picture actually like, what do the figures that we do know tell us about applications to the Family Court and then I am going to move on to look at who are the people that are accessing the Family Court, in my experience as a practitioner and as somebody who speaks to women on our family law advice line every week.

I think we are asking ourselves this question, whether or not separated parents need the Family Courts, because there has been an awful lot of discussion about a crisis in the Family Courts and unreasonable increases in applications. I think we need to question that assumption. It is true, applications to the Family Courts have increased since 2014 when the child arrangements programme was introduced, and I think all of the discussion about increases in applications to the Family Court always goes back to that date because the purpose of the child arrangements programme was to try to decrease applications to the Family Court but when you look back over a

longer period, what we are actually comparing is not really completely reflective of the longer view of what has been happening.

In 2014, there was a particularly low level of applications to the Family Court because off the back of the LASPO, introduced in 2013, there was a peak in applications to the Family Court and it then fell because parents were not able to access legal advice. They weren't accessing Legal Aid. So, comparing it back to that particular date means we are comparing it to what was already a low level of applications and when we look back over a longer period, the current statistics in terms of numbers of applications of private children proceedings, going back to 2011, actually they fluctuate around about what they are at, at present. When you go back before 2011, I couldn't find any statistics before 2011. I think because they weren't counting. You can find statistics of numbers of subject children in private law proceedings but not applications, and looking back at the numbers of children in private proceedings, again, those numbers, they fluctuate a little bit, they go up and down. There was a peak around 2009, which is higher than what it is at present, but actually we are round about a similar figure.

So, should we all just relax? There is no crisis. We are imagining it. No, obviously not. Anybody who works in the family justice system, who works supporting people who are accessing the family justice system is very well-aware that there is a crisis, but over that same period, those figures from around 2009 to 2019 - ten years - the Ministry of Justice's funding has been cut by 40 percent. So, is it any surprise that there is a crisis in the family justice system? But we need to be very clear when we are thinking about what the next steps are and how we reform it, whether separated parents should be diverted away from the system because we have a crisis, or whether actually the problem is that we are not funding the system properly. It is not about irresponsible parents heading off to the Family Courts because they think that is the best place for them, it is about funding, and I expect everybody in this room would like a properly funded justice system. So, that is what the cause of the crisis is and we need to be very clear about that.

We need to be very clear as well that over that much longer period, the numbers of parents accessing the Family Courts, like I said, it has fluctuated, but actually it has remained around about the same. It is about ten percent of separated parents, give or take. That is what it is around. So, of that roughly ten percent of separated parents, who are accessing the Family Courts, those are the parents that we are really talking about when we ask this question. There are roughly 90 percent of parents who don't access the Family Courts. A lot of them access mediation and it is great and it is successful for them. Some of them go off and they speak to lawyers and they resolve their family law disputes that way. Some of them, don't. They just don't access any professionals. They make arrangements themselves and that is fine. The parents that we need to be thinking

about when we arethinking about the Family Court, and in particular Family Court reform, are the ones that are actually using it, that ten percent.

In my role at Rights of Women, I speak to a lot of women. I don't personally speak to all of the women that contact us. As an organisation, we speak to about 1,500 women on our family law advice lines every year, roughly. So, we have, I think, a pretty good picture of what is happening in the family justice system and I think we are quite privileged, as well, because we are lawyers and we are giving legal advice, but the nature of who we are, means that women, I think, tell us things that they might not always say to their lawyers. I think they also tell us things about their experiences of the Family Courts that they don't have anyone else to tell because they are representing themselves. The majority of our callers are unrepresented. The majority of our callers are not in Family Court proceedings, it is fair to say, but those that are, are representing themselves and they tell us about their experiences.

Some of the types of experiences that women tell us about, I am going to give you a couple of case studies and I am going to be thinking about this in terms of that small group of separated parents who access the Family Courts. We know from research that roughly 60 percent of cases, applications to the Family Court, have allegations of domestic abuse in them. We also know that roughly, and I say roughly because this is based on a small sample research, so we have to be careful about saying this is definitive, but roughly another 20 percent of applications have other safeguarding concerns or safeguarding allegations raised within them. So, we have about, give or take, 80 percent of the parents that are ending up in family proceedings having safeguarding concerns raised. I am quite happy to say they are safeguarding allegations. I don't have a problem with that. If allegations are made, they have to be resolved by the court but who else is going to resolve them? That is the role of the court. Those parents need the Family Court to resolve those allegations.

So, I will give you a case study. Now, this case study is typical. It is very much in keeping with the types of stories that we hear day-in, day-out, on our Family Law advice line and I think it typifies exactly why separated parents need the Family Court. So, this caller was calling us because she wanted advice about contact. She had a child who was of primary school age, so reasonably young. She also had a non-molestation order against the father. I have used this example because although what is going to follow in relation to the child arrangements is very typical, what is unusual about this caller was that she had a non-molestation order and that order had been achieved at the end of a final hearing. The court had made findings. This is not an alleged victim of domestic abuse, this was a woman who was a victim of domestic abuse, and this is about a father who is seeking contact. Part of those findings included reasonably high-risk behaviour, like strangulation.

So, this caller actually wanted the father to have contact. She had a non-molestation order to protect her. She had made arrangements through third parties, family members, to facilitate the contact between the father and the child because, typical of a lot of our callers, they would like some form of contact to take place. What they predominantly want is they want the abuse to stop but they don't generally want to stop the relationship between the child and the parent, unless they have to, and they feel they have to often.

She had managed to arrange contact between the child and the father and that had been going along and she was a bit concerned about the child, a little bit unsettled when the child came back from contact, was making comments about the types of things, again, very, very typical that we hear over and over again, that the father had been saying to the child about the previous proceedings, about the order that was in place, the non-molestation order. There was no child arrangements order in place in this case, but she wanted the child to have a relationship. So, one day, the child went into school after contact and the child told the school that there had been an incident during contact when the father had in this case grabbed her by the collar and had dragged her and had been angry and had shouted at her and she was scared. So, the school told the social worker and the social worker came along and did an assessment and the outcome of that assessment was, yes, we are worried about this, but you seem to be dealing with it pretty well, so we think you should be very careful about contact but it is up to you.

So, she was calling us saying I want the father of my child to have a relationship with my child but I am very, very worried about whether or not it is safe. I cannot be the one that puts restrictions around his contact because he is not going to listen to me. He is not going to do what I ask him to do. I have no other option, if I want the father of my child to have contact, to make an application to court, or I can say no, I don't think it is safe, I am not going to promote contact. I am not going to support it and it is then up to him to make an application to the court. Now, that is not an unusual example. That is typical of the bread and butter cases that the Family Courts are dealing with day-in, day-out, and those parents, whether from the perspective of the mother or the father, they need the Family Court to resolve that dispute.

The last thing that I am going to mention is, and these again, we are talking about rough figures, you have roughly 80 percent of applications, that is from Cafcass data, so it is Cafcass applications and not all applications get sent to Cafcass where there are safeguarding concerns that are raised. So, what about that other 20 percent? Well, that 20 percent is going to be a real mixed bag of applications. The types of things that we get told about because, like I said, the majority, as reflective of the Family Court, the majority of the callers to our advice line are survivors of domestic abuse or have raised some form of safeguarding issues, but not all of them are, and the other types

of issues that separating parents need the Family Court to deal with are issues where you have a genuine dispute between two parents about what is in the best interests of their child. What is best going to meet their child's welfare? That is the legal test. That is what they need to decide on and they disagree about what it is.

A very easy example to understand is relocation cases. So, a caller tells us, "I came to the UK from another country", Perhaps as a result of this relationship, "We have children, the relationship has broken down, I want to go home and I want to take the children with me." The other parent, quite understandably, says, "Well, I don't want my children to grow up in another country. I want them to grow up here where I am". Both of those parents believe that what they are doing is in the children's best interests. They both want to be able to separate, move on with their lives, but it is not possible for both of them to be right and somebody has to make a decision, and that is exactly where the Family Courts are stepping in in those small number of cases.

A different example, take a caller who tells us that she doesn't feel that she can trust the father of her child. The relationship has broken down because he has cheated on her. In fact, such an extreme example, but he has been living with both her and the children and the other woman at the same time and she tells us that she feels devastated by the end of the relationship. She feels like the last however many years of her life have been a lie, that the relationship she has had with the father of her children has been a lie and that she cannot trust a single word he says. Now, it would be lovely in an ideal world, we would be able to turn round and say to that parent, "Well, get your act together, yes, think about the children", but that is just not realistic. In some cases, separating parents are going through what is emotionally an incredibly difficult time in their lives and what they sometimes need in that very small number of cases where this is going to be the case, they need to have an authority that will make those decisions when they are emotionally unable to do so.

So, I think when we ask this question, "Do separating parents need the Family Court?", the reason why we are asking it is because, yes, there is a crisis in the Family Courts. We need to think about what is it that has really caused that crisis, and when we are thinking about how to improve the situation, how to reform the Family Courts, because I work in an organisation that has a lot of ideas about reforming the Family Courts, then we need to be thinking about who are the families that are actually accessing the Family Courts and we should be designing the system around them and not around who we, the professionals, would all like them to be.

SIR ANDREW McFARLANE:

Thank you, Olive, for that very powerful and insightful address. The final speaker, and the speakers are doing really well at keeping to time, hint, hint, Heather. It is Heather MacGregor, who, as you will have seen from the CVs you have got, has had over most of the last four decades a whole career in family law and her particular perspective that she is going to share with us this evening is the last 20 years as a Deputy Judge and then a full-time Judge at the Principal Registry dealing with these cases. You will have also seen that Heather's earlier career was as an archaeologist, so she has presumably been chosen because we hope she will dig up an argument against the motion. Over to you, Heather.

HEATHER MACGREGOR:

Thank you, Andrew. Looking round this audience, I have to acknowledge that given that many here have a serious investment in Family Court based solutions, Jane and I have got something of a mountain to overcome. You have been variously described in the literature as the stakeholders and a cross-section of key professionals working in the family justice system. So, in the light of this, it might be said that given we are now in December, asking you to agree with Jane and I, is akin to asking turkeys to vote for Christmas. Having said that, it did occur to me as I heard the radio this morning that the four shortlisted entries for the Turner Prize had decided to form themselves into a collective. In the interests of the sisterhood, we might actually do the same, but anyway, getting back to the fact that I must be adversarial, here we go.

What I do want to say is that because I know that you do all have a serious investment in the family justice system, I want you, and I am relying on you, in fact, to acknowledge that children and families are better served if their disputes are resolved away from the Family Court. I accept, however, that no system, be it in court, or out of court, will work unless it is properly and consistently funded. The evidence, however, does suggest that the very issue of parental conflict, which brought the parties to court, is often aggravated by the process of court proceedings and can be particularly harmful to children. Research on this topic which has been referred to by every President of the Family Division, from Sir Nicholas Wall to the current incumbent, Sir Andrew McFarlane, but what is curious about this research is that notwithstanding it indicates that while overall, and perhaps for obvious reasons, people find the experience of being in the Family Court far from positive, most of those who make applications have made few, if any, attempts to resolve their difficulties by any other means.

As the President said, applications have become the default option, akin at times to going to A&E for some minor ailment, even though that is likely to involve spending hours waiting to speak to a stressed and overworked junior doctor, or in the court system, read someone like me. The way the NHS works in fact could be said to be analogous to the court system, in that such funding that is available is largely spent on the consequences of the illness, rather than prevention, and like the court system there is little, or any, joined-up thinking between the two, or indeed between treatment and post-treatment services. In seeking to divert applicants from the court, I do not seek to minimise the impact that separation can have on a family but rather to emphasise that such tools that we, the Family Court, have at our disposal are mostly ill-suited to resolving the root cause of the problems presented.

In recent lectures, the President has spoken about the unrealistic expectations most have of what the judicial process can achieve and this fact, along with the very limited information available to parents about forms of alternative dispute resolution, clearly fuels what I have experienced as to the inexorable rise of private law applications. The vast majority of these applications relate to simple child arrangements orders, that is to say where the child should live and how much time should be spent with each parent. These disputes can, and often do, involve social, educational and even mental health issues, but, rarely, as the President said, do they involve legal issues that require a legal response. Rather, as he said, they are disputes that arise from a breakdown in the key relationships within a family and in particular between the children's parents.

In his May lecture, entitled "The Children Act 1989: 30 years on", the President said that the concept of parental responsibility was at the core of both private and public law proceedings of the Act and he quoted with approval the introduction to the textbook "Children Act in Practice" by White Carr & Lowe, where the author stated:

"The Children Act 1989 brought about the most fundamental change in our Child Law... The Act has been widely regarded as a structural masterpiece, providing an admirable framework for the promotion of the interests of children and families within a system of support services and court intervention where appropriate."

On behalf of those of us who were practising in Family Law, when the Children and Young Persons Act 1969 was still in force, I can but echo the praise for the introduction of an Act which gave parents the right to have non-means tested legal representation and access to court papers before facing a hearing which permitted the removal of their children and in particular which established a clear threshold of harm before any state interference could be sanctioned. But what of private law?

Where is the system of support services, and where is the concept of court intervention where appropriate or necessary?

As noted above, applications in private law are all too often the default option. There is no equivalent to section 31(2) to establish before an application is made although I accept that the introduction of an attendance at a MIAM as a precondition to issuing applications was on one level an attempt by the government to deal with this. That being said, it is widely acknowledged that certainly in this respect it has been a complete failure. Further, whatever section 1(5) might say about the no order principle, the reality is that once in the court system, the parties want an order. This is notwithstanding, as I say, to the President's references in his May lecture to the words of both Baroness Hale and the then Lord Chancellor, Lord Mackay, about the intentions behind the Act, which as Lord Mackay said, was that "families should be left to sort matters out for themselves unless it can be shown that without a court order the child's welfare would suffer". Baroness Hale, likewise, stated, "Bringing up children is the responsibility of their parents and the state's role is to help, rather than interfere."

In the section of his May lecture under the subheading, "Making contact work", the President referred to the efforts made by those conducting the various reviews of the Act over the last 30 years and he spoke in particular of the changes in terminology: custody to residence, then to "living with", access to contact, then to "spending time with", as being designed, as he put it, to fix child arrangements without enhancing or diminishing parental responsibility or the status of the child's parents. I would hazard a guess that every judge hearing a private law case does his or her best to emphasise to the parents that they are the ones with parental responsibility, which means they are the ones who ought to be making the decisions in relation to their children. The problem is, as I say, people come to court because they want an order and whilst in the court system, this unfortunately becomes their sole focus. The reality is, however, that the very act of a judge making an order is the antithesis of parents exercising parental responsibility, as it is the judge telling them how often their children should see the other parent. Should it be Friday night? Should it be Saturday morning? Should it be mid-week? Should there be a shared care arrangement?

Of course, in some respects, I can't blame parents for their focus on a court order because in fact often they are told by others, police, social services, etcetera, that they need an order. Indeed, in a recent public law case one paragraph of the threshold I had to deal with said that the failure of a parent to get a court order had caused the child to suffer significant harm. I am afraid I didn't make that finding. The trouble is that the making of the court order rarely in fact solves the problems if little or nothing is done to deal with the issue that led the application to be made in the first place, which is why so many cases then revert to court at the first sign of trouble. Although I am reluctant

to generalise and acknowledge, as Tolstoy said, that each unhappy family is unhappy in its own way, my own experience indicates that the inability to communicate lies at the heart of many of the difficulties experienced. Indeed, it is a sad fact that the greater the means we have to communicate, the more likely it is that both parents will say to the judge, “We just can't communicate”, and I cannot be the only judge whose heart sinks when faced with 20 or so pages of screenshots of WhatsApp or text messages, where Anglo Saxon appears to be the only common language between the parents.

In the June report of the Private Law Working Group, a review of the child arrangements programme, it was stated that 60 percent of all applications proceed beyond the FHDRA stage. As far as I can gather, there is no research as to the specifics of these cases but, again, from my own experience, I would say that there is not necessarily any correlation between the length of time a court case takes to conclude and its actual complexity. Rather, it depends on the personalities of the individuals and their investment in continuing their dispute. Currently, we, as judges, have little at our disposal as between the FHDRA stage and the next DRA stage, that is likely to reduce the difficulties, the most oft-used being the SPIP. The research about SPIPs quoted in the Private Law Working Group is interesting in that whilst superficially it appears that most parents, often apparently as high as 95 percent, find these programmes helpful in making things either better for their child or improving their understanding of the impact of separation and the effect of parental conflict on their child, curiously only 45 percent agree that the programme was actually helpful in sorting out child arrangements with the other parent, which I perhaps unthinkingly had thought might be at least one of its objectives.

Further, although we might have a section 7 report by the time of the dispute resolution appointment, again, it is unlikely that Cafcass will be able to make recommendations to deal with the issue of parental conflict, other than to suggest attendance at a SPIP, or indeed mediation, and the difficulty is often, particularly in relation to mediation, that by the time the parties reach this stage they are further entrenched in their desire for a judge-made solution. I do not say this as a criticism of Cafcass, simply to note that as an organisation, it appears to have ended up with the vast majority of its resources given up to the reporting, rather than being able to have a more active role within the family. I note again from the Private Law Working Group that a staggering 25 percent of Cafcass’s budget is given over to the preparation of the safeguarding letter. As I say, there is no real dispute that the court is in fact a blunt instrument when it comes to having the time or resources to fully investigate the often-longstanding issues leading to family breakdown, or, more importantly, having identified those issues, then to provide a solution. The question must also be whether it would ever be the right forum to do so.

In his lecture, “Domestic Abuse and the Family Court”, the President referred to the blog of a barrister called Lucy Reed, who I must say I would be delighted to have in my court, when she said:

“Judges are not superhuman. Those who demand that they should magically find out the objective truth, as they see it, may be disappointed. They do their best on the information available but real lives and relationships are messy and subjective and are rarely captured in objective contemporaneous records and are often re-imagined or reinterpreted for entirely understandable reasons by those who have lived them.”

Lucy was speaking, I understand, in the context of fact-finding hearings where allegations of domestic violence had been made, an issue which has been made infinitely more difficult for judges by the lack of proper representation for litigants, resulting from the decimation of the Legal Aid budget, but what she says appears to me to be equally applicable to much of the background to family breakdown.

Parents think they need a Family Court for a number of reasons. They may think, having paid the fee, that other than turning up, nothing more will be required of them. These are the parents who say, “You, judge, make the decision. We can't communicate. I want an order. He/she doesn't listen”, or variations on that particular theme. There are others, as identified in the Private Law Working Group, who simply do not know what alternatives are available and who fear in any event that they may not be affordable and indeed for many they are not affordable. As is acknowledged, children can experience considerable harm if they find themselves in the midst of continuing conflict, which then may lead them to losing the relationship with one of their parents. This harm, inevitably, has knock-on effects, both in social and educational achievements and often in relation to mental health difficulties. Notwithstanding that, you will find little information about what services are available to families experiencing such problems in the expected public spaces: schools, libraries, GP surgeries, or indeed, I might add, the courts themselves.

In Australia as you have heard from Mavis, they have pioneered what are referred to as Family Relationship Centres, which offer wide-ranging support to families, including, interestingly, support during the relationship. These services can involve simply parents, or, where appropriate, also the children. Their aim is to ensure that either through the services available at the centres, or by further referrals, families are helped to make the more enduring changes in their behaviour that are in turn more likely to lead to positive and lasting arrangements for children post-separation. Such centres, I might add, are funded by the Australian government. The Private Law Working Group advocates a similar service called the Supporting Separating Families Alliances, which I must say trips slightly less easily off the tongue, and I would also say that any acronym which involves the

letters “FA” might need to be avoided, but the key issue is having a one-shop venue where parents can access information and support. Although I cannot speak for areas outside London, it is again apparent from the Private Law Working Group that there are many services which are already available but what is lacking is information and proper coordination.

My own view, and I am waiting for the sharp intake of breath, is that Cafcass would be the appropriate organisation to oversee this, in that it has expertise in terms of the various levels of support required and thus would be the best place to address what support services should be available in-house at the hub, or centre, such as contact facilities, mediation, parenting classes, etcetera, and what additional services would be required for more intense work, such as family therapy or domestic violence intervention, such resources being provided in partnership with other stakeholders. I am not of course saying that Cafcass would provide all the services, simply that they would have an overarching role in the coordination and assessment of the services needed. Cafcass already undertakes by way of its safeguarding work the all-important triaging and it is an ideal service to make the onward referrals to further appropriate services. My idea would be that the parents could have access to the initial Cafcass triaging, either through a website, telephone, or indeed in an old-fashioned sense, a face-to-face service at the centre or hub, in many ways similar to the way many mental health services operate triaging services.

The advantage of Cafcass undertaking this role is: it already exists; it is a universal service in the sense of England and Wales but operates at a regional level; it has statutory existence, importantly, and has statutory powers to obtain information from third parties; it has established relationships with third party providers and, importantly, it has practitioners who have immense experience with families and the consequences for children where there is parental hostility. Last, by no means least, in the sense of joined-up thinking, it has a direct link to the court. I accept of course that this would involve a substantial change to Cafcass’s remit and of course would also require further funding but it does seem to me that without such a body the ad hoc types of arrangements that currently exist, limited as they often are by short-term funding, are in essence doomed to fail. I would suggest, therefore, again another rather revolutionary idea, that, save in limited circumstances, applications under section 8 should not be permitted until parties have in fact undertaken the Cafcass triage and attended the services recommended by Cafcass. This would always however be subject to the assessment by Cafcass itself as to whether the parents should then be diverted back into the court system. I recognise, of course, what is said about the large number of cases where domestic violence is an issue but as noted by the President in his lecture on this topic when he quoted Sir Alan Ward, there is a spectrum of abuse and an index of harm. There will be cases where the abuse and harm is at the high end of the spectrum and thus court proceedings either in the Criminal Court or the Family Court will of course be inevitable but

fortunately the majority of cases are on the lower end of the spectrum, which should be able to be dealt with by means of appropriate support services, both for the victim and the perpetrator. In these cases, it is not always necessary to have a fact-finding hearing, as it is possible to work with parents, as social workers of course do day-in and day-out, without court intervention. Indeed, it may be more likely that there will be greater willingness to engage such services if they are part of a holistic approach linked to parent/child relationships.

Finally, what of the "I need/I want a court order" brigade? It is how often said that the out-of-court process doesn't work because it lacks the certainty of a court order? If this is correct, the processes described above should lead parents to come to a detailed parental agreement which could then be recorded and kept on file at the relevant hub, which could in turn be referred to if problems arose. In conclusion, therefore, please note the words of the motion. This is not about abolishing the Family Court but rather it is about providing appropriate services to those who need help in being able to exercise their parental responsibility in ways that best serve their children's welfare. Parents may say they need a Family Court but what they often mean is that they want someone else, that is to say the judge, to make decisions for them and as that great family man, Sir Mick Jagger, once said, "You can't always get what you want but if you try sometimes you might get what you need." Thank you.

SIR ANDREW McFARLANE:

Heather, thank you very much for that wise and warm and pithy contribution that I found myself in agreement with much of what you had to say, rather spookily. Before we move to the questions and answers, people get up and give these contributions. They don't just drop into their laps and onto a piece of paper. It takes a lot of thought, so I think we all ought to thank each of the four speakers for what they have done so far. Right, now, it is your turn. We have got about 40 minutes and really we are looking for contributions which are questions of the panel or thoughts on what has been said. The whole event is going to be transcribed and put onto the Family Justice Council website and there will also be a podcast, an audio recording, of it available. So, you need to know that before you speak. Could you each identify yourselves with your name and your organisation and I will be firm to the finishing time of seven. Everyone has been told it is seven and we will hold to that but we have got 40 minutes now. There are two roving mikes and Daphna, here, and Paula at the back of the room. Who is going to go first? Right, there we are.

HER HONOUR JUDGE MELLANBY:

Her Honour Judge Mellanby from Watford. These are my own thoughts, not speaking on behalf of Watford Court. I would like to associate myself with those against the motion. Do separating parents need the Family Court? In the time-honoured, recently time-honoured, fashion of Parliament perhaps I could propose an amendment? That would be do children need the Family Courts to sort out their separating parents? It is absolutely bonkers that us judges are having to say whether or not children should be collected from Gordano Services or the Delamere Services and it is not an original thought. Sometimes, a judge, not who I know, has said, "Be careful what you ask for because it will be Scotch Corner", and my goodness they come up with a solution. So, I applaud the suggestion of some family resolution service and some triaged system, so the hard-pressed judges at the coalface can use their skills and their legal skills for sorting out issues of protection and welfare, rather than the parents' bitter arguments and conflict. I have had the unfortunate situation in the last week of having to deal with a contact application in a private law situation where the father was in person, the mother got funding, and I had to hear from an eleven year old, who said she had been raped by her father. I did not have the resources of a lawyer to ask questions of that child and I felt that we as the Family Court were doing so much harm and we are not being faithful to doing justice to these children and we have to remove the bitter minor conflicts away from the court arena and concentrate, as the Children Act intended us to, to protect vulnerable children from abusive parenting and not to sort out conflicted parents.

SIR ANDREW McFARLANE:

Thank you. I am not going to come to the panel after each contribution but I will turn to see whether anyone wants to make an observation about that, or not.

JANE ROBEY:

I believe that is one for us.

SIR ANDREW McFARLANE:

Yes, there we are. This is meant to be a friendly debate. Melanie, in the middle, there.

MELANIE CAREW:

I am Melanie Carew from Cafcass Legal and I just wanted to ask Olive and Mavis, I noted what Olive said that there were perhaps 20 percent of cases that were really a dispute between parents about what is in the best interests of their child, so taking away the risk element and we know that those decisions are made in court by lawyers, judges usually being lawyers in the past, and I just wondered if you had an idea what other profession might perhaps be better placed to make those decisions? Is there another profession, other than law, that might make better decisions about those cases where there isn't a risk?

MAVIS MACLEAN:

It would be very nice if there was, I think is my answer. The other thing about lawyers making decisions is lawyers with advice making decisions, as Cafcass does. This is your role.

SIR ANDREW McFARLANE:

Olive?

OLIVE CRAIG:

No, like I said, we have lots of suggestions for improvements to the Family Courts and the family justice system as a whole but ultimately there has to be somebody who can adjudicate, so that perhaps is with advice, with advice from other professionals who have met with the children, who can feed back in terms of what is in the children's best interests, who can work with parents. Wouldn't it be lovely if there were people out there, not just... everybody was represented but then also everybody had a bit of emotional support going through proceedings. It would be lovely if there was a team of people around every family but ultimately somebody has to adjudicate and that is what judges do. They are making decisions based on the law. That is the role of the courts.

SIR ANDREW McFARLANE:

Thank you. Yes, the gentleman at the front caught my eye first.

FRED PONSONBY:

Thank you. I am Fred Ponsonby. I am a Lay Magistrate in London. I also sit in the Youth and Adult Criminal Courts and I also sit in the Domestic Abuse Adult Criminal Court, in fact which I was doing yesterday, and I am Chair Elect of the Greater London Family Panel coming in. So, I was reflecting all the various things I do as a Magistrate and what I find most useful for that range of things that I do... and I have to say I think the single sitting I find most useful is sitting in a FHDRA Court and that is because quite often we resolve issues at the very first hearing, particularly in Central, where the Cafcass officer would have very likely seen children. I know that is not available in other courts within London, I don't know what the situation in the rest of the country is, but for me, as a Lay Magistrate, hearing cases, I feel it is where we are most effective and one of the reasons I think we are effective... well, there is more than one reason. One reason is the immediate support of the Cafcass officer. Sometimes, you get the immediate input of the child but I think the authority of the court does help. So, I very much endorse the point made by Mavis, if I may, and with her analogy of you go to a hospital and you don't know whether you need a plaster or something much more serious. A lot of parents are in that position when they come to court and I think us as lay people are in a position to resolve things, sometimes immediately, and also it is not that unusual where parties want it resolved and we say, “No, it is not appropriate”, and we have to go to the next stage. I think, coming from that background, I would say that, yes, separating parents do need Family Courts but it doesn't always need to be legal experts who make all those decisions. The Lay Magistrates have a role as well.

SIR ANDREW McFARLANE:

Absolutely, thank you. Do any of the four of you want to comment on that? No, thank you.

HEATHER MACGREGOR:

Well, I suppose what the Private Law Working Group says of those cases that are capable of resolution so early if they had another outlet is did they need to have been in the family justice system in the first place? I mean the other thing in relation to statistics is of the cases that we do resolve... and I am a great supporter of children being at court from a certain age because I think it does help but we still don't know what the statistics are of those ones coming back. You know, you can have a first flush of enthusiasm but because you haven't given them many tools to deal with things, they then come back. So, I think that would be the point I make.

SIR ANDREW McFARLANE:

Right, Madeleine, and then Jane.

MADELEINE REARDON:

I am Madeleine Reardon. I am a Circuit Judge at East London Family Court. I would like to ask Mavis, I don't know if she or any of the other panel members know the answer to this, but in those jurisdictions that don't have a fully adversarial Family Court system, as we do, what do they do with the cases that involve serious disputed allegations of harm? Is there a better way than our way, which is the full-blown court battle.

MAVIS MACLEAN:

In some of the Scandinavian settings, matters will be resolved, anything to do with children goes to Children's Services if it is a children matter. Does that help you? It goes to... during the days when... you wouldn't, because you are not as old as me, but when social work was sort of at its height and the children's officers were extraordinarily expert and highly respected, it is that sort of setting in which decisions would be made, unless of course you are approaching criminal activity.

SIR ANDREW McFARLANE:

What struck me, I have quoted this publicly before, we went to Sweden with the Family Justice Review and looking at public law proceedings and discussing with about ten social workers in a meeting and they said that the care hearings, this is public law, typically take two hours. That is the final hearing. So, I said, "What do you about fact-finding?" and they didn't really have a concept of fact-finding. So, I said, "What do you do if you have got a baby and there is a fracture at the end of the long bone in the elbow and clearly someone has yanked the child and the child spends half the day with the childminder and half the time with the parents, how do you tell whether it is the childminder or the parents", and the response of the social workers was, "I don't think we would be going to court for just one fracture of a baby", and we tried that with that the judge the next day and she said, "No, they wouldn't come for something like that." So, I think Mavis is right. It is absorbed within the social services who take a view and if you don't agree with the view, then there doesn't seem to be a mechanism for challenging it in the way that we have. We have got a culture that does that but it is really strikingly different over there.

MAVIS MACLEAN:

I mean it is a pretty expert assessment.

SIR ANDREW McFARLANE:

It is. No, they are very canny and there is also a culture over there, going back to what you were saying about the golden days, they go to the social workers for help and advice and accept the help and advice. There is a feeling that the social workers are on their side, which we have lost.

MAVIS MACLEAN:

Yes.

SIR ANDREW McFARLANE:

Jane was next and then the lady in the middle.

JANE PROBYN:

Thank you. My name is Jane Probyn and I also sit with the East London Family Court but my court is in Croydon, which has heavy demands on it, as you can imagine. What I have taken from all of the speakers is really what should the Family Court look like, and the range of services which might be available, which would inevitably separate, frankly, the wheat from the chaff, and those serious cases which judges in our system have to deal with would remain in our courts but I anticipate a substantial majority of applications would be dealt with within a wider and more service-based spectrum. It is hugely unfortunate that we don't have those resources but it was extremely interesting to listen to all of the speakers who really, whilst arguing from different perspectives, seem to be making that one key central point but where we go from there is not a matter for me, of course.

SIR ANDREW McFARLANE:

So, you are more viewing it as the Turner Prize solution, really.

JANE PROBYN:

Yes, entirely.

SIR ANDREW McFARLANE:

They weren't necessarily at odds with each other.

JANE PROBYN:

No, no.

SIR ANDREW McFARLANE:

There we are. In the middle, there.

DR JANE KRISHNADAS:

Hello, my name is Dr Jane Krishnadas from Keele University and the Convenor of the CLOCK project, which was initiated as a direct response to LASPO and it is a collaborative project, so I am just picking up on Heather's point with regard to the support services in court. Since we have been running, since 2012, the objective was to signpost litigants in person out of the court. Our Designated Family Judge was very keen that we weren't just welcoming people to the court but our aim was to try and signpost out to services and we have a collaboration of rape crisis, domestic violence services, housing, Cafcass, and we have since cascaded to eight courts across England. The difficulty we are facing is actually those cases are being signposted back to us. Now, that may be because I think the Turner Prize is that we all want a properly funded legal system and that was echoed throughout but the difficulty is that there seems to be... and especially the division of public law reform and private law reform, the crossover cases between the public and private law domain, and many of the cases that are signposted to us are from our local authority Children's Services, as indeed they are from GPs and from schools. So, you could argue that because we don't have funded services, we don't have anywhere for the cases to go, in which case it would be better if those services were better resourced, but you could also argue, and I would stand with this argument, that the serious allegations of risk of harm to children do need... the fact that the local authority, rape crisis, domestic violence, are all signposting back in, is saying that actually we need court intervention as part of a holistic collaborative project.

SIR ANDREW McFARLANE:

That is helpful. Does anyone want to comment on that or...? I imagine all four of you are nodding.

MAVIS MACLEAN:

Just to say how brilliant CLOCK is.

SIR ANDREW McFARLANE:

Yes, hear, hear, yes.

MAVIS MACLEAN:

I wish it was everywhere.

SIR ANDREW McFARLANE:

Hear, hear. The lady next to you caught my eye and then in the middle here.

SARA McILROY:

Hello, my name is Sara McIlroy. I am a barrister and I am also a postgraduate research student at the University of Exeter. I think there was a general agreement that the family justice system is in need of reform, the out-of-court point, and I think there was also a general view that some people will always need the Family Court, though not necessarily the majority. I would like to ask the panel what do you think is the most needed reform to those in the court system, so those who the holistic services can't help, those who the ADR services can't help, for those who have to go into the court, what would you say is the most needed reform for the process or the procedures that we currently have?

MAVIS MACLEAN:

Tear up LASPO, easy.

HEATHER MACGREGOR:

Well, I think, also, once we have made our decision, helping us have the tools to put that decision into effect. I mean one of the difficulties at the moment in relation to enforcement, I see another section of whatever it is, eleven-something-something, you know it is hopeless and the reality is a lot of people know that we don't really have much power to enforce the orders we have made at enormous expense, both emotional and actual pounds, shillings and pence. So, I mean I would like us to have some... you know, as I said, with the analogy with the NHS, an awful lot of money spent on having the big operation and then nothing spent on the physio, or the this, that and the other, that actually gets you on your feet and making the operation successful. That is what I would like.

SIR ANDREW McFARLANE:

Yes, Jane, yes.

JANE ROBEY:

Yes, I mean it is about resourcing, isn't it, providing the right level of service for the people that need it and all we have got is the court and very little else and people do need other things. I mean I do think that there is a cultural issue that people who are divorcing and separating say, “Right, I will see you in court.” Why would you do that?

SIR ANDREW McFARLANE:

Yes, okay. Olive?

OLIVE CRAIG:

Yes, I think, yes, tear up LASPO but also I think we can think about reforms in different layers. So, we need Legal Aid back for children proceedings and let us bring it back for all other family proceedings, great, but specifically for children proceedings, private children proceedings and we need to ban direct cross-examination. It can only be done with primary legislation. It is horrific that it is still happening. Those are small reforms. In terms of big picture reform, I think we need to be thinking about the whole model and our whole approach to the way in which we do family justice. I mean family justice... like I said, I work across criminal and family law and working within the women’s sector, working with domestic violence support services, you know, they think about

people holistically, about all of the problems they have, and the Family Court is so separate, it is so separately from anything else that is going on in people's lives and that just seems like a really silly approach to take. So, I think in terms of big picture reform, we need to be thinking about the whole model, the whole approach, but specific reforms today, LASPO, direct cross-examination.

SIR ANDREW McFARLANE:

Thank you.

MAVIS MACLEAN:

And we go back to your report.

SIR ANDREW McFARLANE:

The Family Justice Review.

MAVIS MACLEAN:

Otherwise, known as the Norgrove report.

SIR ANDREW McFARLANE:

It was the Norgrove report. There was hand up at the middle at the back. Yes.

CHERYL MORRIS:

I am Cheryl Morris. I am from the Official Solictor's office but what I actually want to talk about is... I am very, very old. I am so old that as a solicitor I remember the green form. Now, it seems to me that a lot of members of the judiciary who have spoken have been talking about the trivia which they are having to deal with and it leaves them without time to concentrate on the really important things. Now, when I was in practice, I was really sad, I worked in pretty low coupon areas and people would come in with really silly disputes about... really small disputes about, say, contact and they never went to court because I had a Rolodex... does anybody remember Rolodex, which had all the various voluntary organisations in the area and I would write a letter to the other side. We would also get green form Legal Aid and within two or three letters we would sort it out and the

courts never saw it and it seems to me that, yes, tearing up LASPO would be a good thing and it would also save the judges an awful lot of time.

SIR ANDREW McFARLANE:

Yes, thank you.

MAVIS MACLEAN:

Can I add one sentence?

SIR ANDREW McFARLANE:

Yes.

MAVIS MACLEAN:

I am just thinking of Jane's example of the cohabiting couple's issues, you know, ten minutes with a family solicitor would have dealt with that one.

SIR ANDREW McFARLANE:

Yes. I remember green form and Rolodex but letters, I have forgotten those. Michael?

MICHAEL LEWKOWICZ:

Michael Lewkowicz from the charity, Families Need Fathers. First of all, I will just say on LASPO, I think LASPO has inflicted terrible, frightful damage to children in this country. Having said that, to simply revert back to pre-LASPO days isn't going to solve the problem and I am on the side, overall, of those who are saying that we don't need the Family Court other than as a backstop but we need something else. We need an intervention of perhaps, you know... I went to a conference on shared parenting the last couple of days and there were presenters from Sweden and they are now testing out family coordinators who have the power to make decisions in the family about what the arrangements should be, get involved straight away, early intervention. Children can't wait for three, six, twelve months for courts to make decisions. It is too harmful. It is not a child-appropriate timeframe. So, we need something different but that family coordinator has the backstop of the

court, so that if something goes wrong they can come back and give evidence as an expert witness, so people know what to do and actually can move things forward.

I think that is a much, much better solution than just trying to revert back to where we were and one minor correction, if I might be permitted, the suggestion that only ten percent of people go to court and 90 percent don't, as, Sir Andrew, you reported in one of your recent lectures, that figure has been very much revised now with Cafcass thinking that we are actually nearly to 38 percent who go to Family Court. The old figure was based on some ancient old survey which was not designed for the purpose it was being used. So, it is a huge number of people and we need to be thinking how it is that jurisdictions like Sweden don't have a higher incidence of serious issues with children but only two percent go to court versus our 38.

SIR ANDREW McFARLANE:

Yes, but the parenting coordinator, do the parents agree to be bound by what the parenting coordinator...

MICHAEL LEWKOWICZ:

They are obliged to follow what the parenting coordinator...

SIR ANDREW McFARLANE:

That is in the law, is it?

MICHAEL LEWKOWICZ:

Well, I don't know if it is in the law. I am not... I have just seen a presentation and it would have been useful to get to ask more questions of the trial and that is something which we need to do but, clearly, they have the authority of the court, if you like, behind them and they have the power to decide what the arrangements should be and they can intervene and assist in contact arrangements, if necessary. It is interesting, by the way, that since a few Supreme Court judgments recently in Spain, joint care of children has been really, really going up in the last five, six, seven, eight years.

SIR ANDREW McFARLANE:

There we are. Any comment on that?

MAVIS MACLEAN:

I would like to see the reference of that 38 percent figure.

SIR ANDREW McFARLANE:

Yes, I used it and immediately that led to a flurry of emails from various academics saying, “Hang on”, and I had got it from Cafcass, so there is a “hang-on” about—

MAVIS MACLEAN:

38 percent of what?

SIR ANDREW McFARLANE:

Of all the separating couples in the country.

MAVIS MACLEAN:

But we don't know...

SIR ANDREW McFARLANE:

No, we are not going to get into it but there is... Liz Trinder has a—

MAVIS MACLEAN:

I know where the ten percent figure comes from and it is quite old but 38 percent, I need to know of what? When I used to teach MOJ officials how to interpret figures, one of the classic tricks we used to play was tell them about... look at the sample. We were told about this survey, which found that 50 percent of the population had walked on the surface of moon. The sample was Mr and Mrs Buzz Aldrin. I will just leave that thought with you.

SIR ANDREW McFARLANE:

We are not going to do it now but there is a serious need to try and get a view as to just how many... what proportion of the population are coming to the Family Court because in terms of public policy, putting in resources, if it is only ten percent, it used to be said only ten percent come and only ten percent of the ten percent fight.

MAVIS MACLEAN:

Exactly, that was the old figure.

SIR ANDREW McFARLANE:

But that is a tiny amount but my feeling is that in terms of the population as a whole we are seeing a very substantial number of people coming but whether it is 38 or ten... I think it would be really helpful to have some sound statistics. Now, the lady who next caught my eye and there is someone right at the back but this lady first. It is something to do with the lighting, I can't see right at the back but we will get round to you.

CAROLINE BOWDEN:

Hello, Caroline Bowden. I am on the Family Committee of the Law Society and their representative on the Family Mediation Council and old enough to know about green forms and fill them in, as well. So, with my Law Society hat on, just to echo about the post-LASPO world. We are obviously very active in promoting the early legal advice, bringing back Legal Aid, for modest amounts, really, but just for that vital triage that other people have stated and with the mediation hat on, that can also be linked to a referral into mediation which is far more successful when it is done at an earlier stage and when, I find, as a mediator, that when we get couples at an early stage, or just one, we are doing an enormous amount of triage. Now, that is not captured by any data but if we see one person because the other one was refusing, we have to put them on the way... we send them on their way to other appropriate agencies, the court, if necessary. Focusing... when we talk about MIAMs, it seems on that very small number, where they just got to the point of court issue and then we say, well, the MIAMs were unsuccessful, because by definition they were, because by definition they have then followed through to go to court, but that is not the same as the sort of mediation assessments that we do when they are at a much earlier stage and the parties are not entrenched, they are far, far more successful.

So, where is triage going to happen? Currently, I think an awful lot of triage remains with mediators, when they have to, and also I think with the lawyers when they see them early on, those who can afford lawyers, to get out to early DR and get out to other services and, hopefully, at the point of issue we are remaining with those who haven't yet been able to afford Legal Aid or have chosen to do DIY solutions and then they need to be turned away to other... those who do not need the Family Court, they can be diverted at that point if they haven't heard...which they should have done by the other professionals, such as mediators and solicitors, who should have intervened earlier to get them out of the court when they recognise they don't need to be there.

SIR ANDREW McFARLANE:

That makes sense. Anyone? No. The lady at the very back... well, there are two of you now. Yes.

BELINDA JONES:

Hello, my name is Belinda Jones. I am a family mediator and also a parenting coordinator and I would like to agree with the comments that have just been made by the lady at the front. We triage a lot, when you see people at the start of the process, but also if you are a parenting coordinator, you triage at that stage too. That is when you see people who have been through the court process. They are fed up of fighting. Their solicitors are also fed up of them fighting and in the UK at the moment, it is a voluntary process they both have to sign up for but if you look at parenting coordination in Canada and the United States, for example, in different states, different provinces, it can be ordered by a court and other times it is just voluntary. What I find with both hats on is that when you bring two people together, rather than have two people in an adversarial process, you can bring them on an awful long way and parenting coordination has a... it takes an awful lot of the principles of mediation but it allows you to work separately with both parties, which isn't something you can do in mediation, to actually help them with communication and it is surprisingly simple when you have two people who finally want some sort of help. Usually, they think it is the other party who needs the help, but that is okay, you can work with that if you have two people together. So, I am very much for bringing people together at any stage in the process, whether it is mediation at the start, parenting coordination at some other point, because that is where you help the children the most.

SIR ANDREW McFARLANE:

That is helpful. Yes, the lady next to you.

ALICE TWAITE:

My name is Alice Twaite and I work for the Transparency Project, which is a small charity hoping to try and make Family Court issues a bit clearer for the public and a wide range of people and I really just want to come back to the 38 percent and I realise I am not actually asking a question, so, sorry, a very quick comment, without delving back into it, I just wanted to say that the Transparency Project have a blog where they tried to assess that claim and analyse it and it is a very good starting point for anyone that just wants to delve more deeply into it, with all the links that we could find around analysing that and it is called, if anyone is interested, "Custody fights blight four in ten breakups – a word of caution?" It is written by Kelly Reeve, on behalf of the Transparency Project. A quick Google will find it.

SIR ANDREW McFARLANE:

I think it was triggered by my 38 percent.

ALICE TWAITE:

It was but also what the media then did with that, having gone through a press release from an organisation speaking tonight and all the rest.

SIR ANDREW McFARLANE:

And what is the bottom line?

ALICE TWAITE:

There isn't a bottom line. I suppose if I was tentatively going to make a stab, it would be nearer the 38 than the ten percent, if you read it... but it wasn't me that wrote it. So, actually, I might be being unfair. There is a real note of caution around very, very unclear definitions of all the different things applied to reach that figure, as far as I can see.

SIR ANDREW McFARLANE:

The importance of it is... in the end we get who we get and we deal with them but the importance of it is if the public at large understood it was that sort of proportion, or anything like it, it would be recognised as a significant social issue, whereas if it is just a few people who can't sort things out,

it is not worth spending a great deal of money or giving it any priority but the feel is from being a judge and the rest of us, a lot of folk currently can't sort these things out, particularly as there aren't lawyers available for most of them to go to and it is really hard for them, it is hard for the children. It is harmful for them, it is harmful for the children, and we aren't necessarily helping. We are the backstop but... and we do what we do but it is not a great way of sorting disputes out. So, I think if the public at large understood this was a problem for a significant number of people who separate, then it would go up the policy profile. Yes, Jenny, and then the gentleman next to you.

JENNY BECK:

I am Jenny Beck. I am Chair of the Legal Aid Practitioners Group. Obviously, I am all for the green form, I don't care if it is green, but anything that brings back that first level of triage at a solicitor level. The point, there, is really about education and I just really was interested to see what people's thoughts were about how we can educate people to see what the courts shouldn't be used for. I think everybody is agreed that is needed to protect people who are vulnerable and to make sure we can maintain the rule of law and look after children and victims of abuse who wouldn't otherwise get justice but to siphon off those unnecessary... when we had the green form and that early legal advice, it wasn't just that we were sending people off to mediation, which we of course were, but it is also that we were informing people as to how blunt a tool the Family Courts were and how inappropriate they were to bring cases of Johnny being returned without the same socks that he went off in. So, I just wonder whether or not there is another way of getting that education a lot earlier in people's lives, even at school level, so people understand the use of the court and aren't just running to it for everything.

SIR ANDREW McFARLANE:

Yes, well, there is nodding all round here. Has anyone got any...? .

HEATHER MACGREGOR:

Well, I mean, again, Stephen Cobb's group talked about the old-fashioned... again, as Andrew has told you, I am incredibly old, those old-fashioned public law announcements on the telly, you know, stop sneezing and all that. I mean, why can't we have... we have social media now. Why can't we have a sort of genuine, not patronising, but a genuine informative public law information programme. It can start in the schools, whatever.

SIR ANDREW McFARLANE:

Public health information.

HEATHER MACGREGOR:

Yes, exactly, I mean these things are social and public health issues.

SIR ANDREW McFARLANE:

Currently, that message is transmitted, I would have thought, in every Magistrate's Court and every District Judge's chambers when they get there but by then they have paid their money, they have applied, and they want a court system. So, we have just got to get that message out there before they come through the court door. Yes.

MAVIS MACLEAN:

I would say the Archers.

SIR ANDREW McFARLANE:

The Archers, yes.

MAVIS MACLEAN:

They did a brilliant job on coercive control and on contact earlier.

SIR ANDREW McFARLANE:

Yes, and the Simpsons.

CHARLES KENYON:

I am Charles Kenyon and I am from the University of Lincoln, where I have been studying the effect of parenting plans in reducing conflict with separating parents. As part of that, I have been sitting in on the Separated Parents Information Programmes, mainly in Grimsby and Scunthorpe, and I have been very struck, I just wanted to reiterate what Heather McGregor said, of how positively

they are received and the 90 percent, I am sure, are quite rightly saying that they really come away having learned a lot, possibly because they are in groups that don't include their partners. Also, I have observed that many of them say they are just far too late. Many of them are attending these SPIPs after their orders have been obtained and that is perhaps why only 45 percent say that they haven't been any use in sorting out arrangements for their children. So, a little bit earlier might harness the 90 percent of people attending there who feel that they are a really good thing.

SIR ANDREW McFARLANE:

Well, I think everybody who has had experience of it says that they are a good thing and they achieve results and I think a clear recommendation of Stephen Cobb's group is that as soon as a case that doesn't involve safeguarding or child protection comes into the court, before they ever see a magistrate or a judge, they go off to the SPIP and get wised-up by that process. Yes, it is now five to, so there are two questions, the lady in the middle, here, and the lady at the back, there.

DENISE INGAMELLS:

Hi, I am Denise Ingamells. I wrote the SPIP.

SIR ANDREW McFARLANE:

That was just the warm-up act, wasn't it?

DENISE INGAMELLS:

Thank you. I also deliver it a couple of times a week and have done for the last ten, eleven, years since it was written, so I have seen probably 8,000 or 9,000 people, something like that, parents on the SPIP and I would say, yes, most of them say earlier and I would say, yes, about 95 percent of people would say they found it really helpful and they are challenged. It is not a lovely, cosy group where they sit and, you know, everybody agrees with everyone else. They are challenged, but I would also agree with Jane when she says about having mediation as an activity ordered alongside the SPIP because if they are... I mean that is something that can be done now because I think there are a lot of things that could be done in the future. It could be earlier, all sorts of things, but if there is something that could be done now, it is actually that what happens is that window of opportunity at the end of the SPIP is lost because they go back to their lives and, yes, they found it useful but mediation could actually help them put that into practice and catch that opportunity that exists at the end of it.

SIR ANDREW McFARLANE:

Yes, so they come out of the SPIP and they are ripe then for some focus, yes. Thank you. The lady towards the back.

SUKHCHANDAN KAUR:

Hi, I am Sukhchandan Kaur and I am from Nagalro. Nagalro is a professional association for children's guardians, family court advisors and independent social workers. In a roomful of lawyers, I am going to bring in a social worker perspective, working and supporting the lawyers and the courts in resolving those disputes. My view is that by the time parents make applications to the court, they are often very exhausted, emotionally drained and they are coming to court for a solution. They expect magic solutions from there. At that point, dealing with their emotional wellbeing is really important, managing their emotions. If we could capture that at that stage it would be very helpful. What I would suggest at that point, the initial assessment, which is normally called a safeguarding letter, a closer look, a better assessment of really what the issues really are in this family and from that there would be some cases where there would be some serious issues such as domestic abuse, there could be sexual abuse, all those serious cases where it requires further risk assessment. That risk assessment will then decide whether there should be contact, or whether there needs to be further work, such as domestic violence perpetrators programme or other programmes depending on what the risk is. If the risk is not manageable, then looking at how those children can maintain a link with the parents.

On the other side, if there are no serious issues, however, it is parents just fighting with each other for no reason, that requires a closer look and working with... maybe four to six sessions with the parents, working together, sitting them together, a more educative role. That could be put through a very enhanced Separated Parents Information Programme or it could be individual work. I think from our members who have worked with... independent social workers, working through lawyers, that approach, where working with the parents has produced good results, where if there are risks whether the children are going to be harmed, a decision is made whether contact is really in the child's interests, or where decisions are made at the assessment that those children will benefit, however those parents have difficulties. It is working with those parents from an educating point of view to try and help them to resolve their dispute, so that they can have a relationship with both parents.

SIR ANDREW McFARLANE:

Yes, that is helpful, thank you. I am going to, in a minute, ask each of the four speakers to just think of one thought to those matters but we are going to have a vote because this is a debate but this is quite a binary thing. I am tempted to say, "Do all the separating parents who make an application always need the Family Court?" but that is very complicated. That is the parliamentary thing. So, I think we will have a vote for the way it is written there, a vote against, but we will also have a vote for the Turner Prize resolution, which is that the Family Court is needed for the sorts of cases that Olive, in particular, identified but the apron of services and apron of interventions around the outside of the Family Court before you get in is also needed, so that really all four speakers have described two halves of the same coin, or whatever the phrase is, and that is the Turner Prize option. I have just spoken for it, haven't I, really, but quick closing remarks from each of the four of you. If not...?

MAVIS MACLEAN:

All I would say is you are talking about education, I think we are talking about the management of expectations and I think that is what Cheryl was talking about in the early legal advice, which is something which I think is extraordinarily valuable and which we should try very hard to recover.

SIR ANDREW McFARLANE:

Thank you, Olive.

OLIVE CRAIG:

I think the point I was making that we need to be thinking about reform in terms of the actual people that are accessing the Family Courts and I would like to see us think and speak a little bit more kindly about them because actually what we know is that they are genuinely going through very difficult things in their lives, whether this is the right system or not. That is what I would say. Problem families, not pesky litigants

SIR ANDREW McFARLANE:

Yes. Jane?

JANE ROBEY:

I would support the idea of general legal education for the whole population across a range of issues. I think that it is my experience that most people don't go into a court in their lifetime and when they go in because they are separating, it is a totally alien environment and a real shock to them and it is a system in and of itself. I think that we have all more or less said the same thing from different point of views, with some disagreement, that there is a need but it needs to be different.

SIR ANDREW McFARLANE:

Yes, thank you. Heather?

HEATHER MACGREGOR:

Just two things. One, I think the point you made about real figures, as best as we can, in relation to what the problem is, so that if at all possible it can go higher up the scale in relation to really providing the appropriate resources and I think the other thing is perhaps following on from what Mavis has said in her speech when she said we have to ask the government what it wants from a family justice system. I would say we have got to ask the people who come to us what they want and what they think they are going to get? Maybe if we get real research in relation to that, we can help them to understand it is probably not what they are going to get and that may be an incentive to them to look at something else.

SIR ANDREW McFARLANE:

Thank you. Right, make your mind up time.

HEATHER MACGREGOR:

Should we leave the room?

SIR ANDREW McFARLANE:

No, you can hide under the table, if you like. All those who believe that separating parents do need the Family Court, put their hands up? That looks to me like about a quarter of the room. Is that fair enough? All those who do not believe that separating parents need the Family Court? That is a

smaller number, mainly the judges. All those who would go for the unified Turner Prize resolution. Yes, yes. Good. I think that is what we would all five of us think. It is a no-brainer, actually. You want a joined-up system where the option of coming to the court is there for those who do need it but before that they are offered a range of interventions around it. Before we go, I am going to ask you to express your thanks in a minute, but I want to particularly thank Paula and Daphna, not just for tonight, which has gone seemingly effortlessly, but of course it has taken a lot of effort. The Family Justice Council is unique in our system. You look round the room. Look who is here. Look at the variety of people who feel connected to it. No-one else is putting on an event like this and no-one else does the work the Family Justice Council does around the science of the system, looking at the bigger picture in the reports it pulls together and the guidance it issues and the conference it runs in the spring of each year. I suspect Paula and Daphna working in the office of the Family Justice Council at times feel it is a thankless task but this is an occasion when we can thank the two of them and the four speakers for tonight. Thank you. Right, thank you for coming. Safe home, and don't take any of the turf with you on the way home.

[Recording ends]