



Adoption and Family in the 21st Century

A summary of events

In March, the Family Justice Council held a series of online seminars on Adoption in the 21st Century (this replaced its annual conference that had twice been cancelled due to the pandemic). It culminated in the Bridget Lindley Memorial Lecture which this year was given by Baroness Hale of Richmond.

Seminar 1 – 1 March 2021

Dr Brian Sloan - Fellow in Law at Robinson College, Cambridge

Dr Brian Sloan opened with his presentation about adoption in Ireland and the common law world, in particular Hong Kong and the US. He explained that adoption has had a difficult and controversial history in Ireland since its introduction in 1952: it has historically involved the cruel treatment of mothers and children, and pressure on mothers to consent to the adoption. This history has cast a long shadow, the fallout of which will be felt for a long time. It was noted that there have been similar experiences in Australia within the aboriginal population.

Dr Sloan stated that there were only 79 adoption orders made in 2019 in Ireland and most were step-family adoptions. Also, the character of adoption was different from England and Wales. For example, the age profile differed: in England Wales, the emphasis was for it to take place early in life, whereas the age was much higher in Ireland. The overall number of adoptions were low but there was hope it would increase due to legislative changes. Dr Sloan explained that the age profile differed even more in other jurisdictions. Adult adoption was available in most US states and this was used often to formalise existing relationships.

The idea of best interests being paramount was no means straight forward, which was particularly the case in the adoption context. It was interesting to learn that the word 'paramount' did not yet appear in the Hong Kong adoption ordinance.

Turning back to Ireland, it was still the case that the consent of a father (not married to the mother, not a guardian and who does not have control or charge of the child) was not a pre-requisite for a child to be adopted. It therefore does not have to be dispensed with. The unmarried father was, though, more likely to have guardianship than in the past. Unlike in England and Wales, a father could acquire guardianship without the consent of the mother and without a court order based on cohabitation with the mother.

Professor Julie Selwyn - Professor of Education and Adoption, University of Oxford

Professor Julie Selwyn started by sounding a note of caution that there were many difficulties in comparing practice across Europe. It was also important to remember that adoption was a national concern; there was no EU common policy. As a result, the concept of adoption was understood differently in different countries. A key difference was whether adoption was seen as being integral to the child protection system or as a means to meeting the needs of infertile couples wanting to start a family and infants.

Nevertheless, all types of adoption were decreasing in all countries. However, the types varied in terms of proportion. In Portugal 99% of adoptions were domestic and 1% inter-country. In Sweden and France, 20% of adoptions were domestic and 80% inter country.

The majority of domestic adoptions in France and Germany were 'relative adoptions'. Professor Selwyn noted that if we look at the proportion of the number of children adopted per 100k it was a different picture. On this measure, Bulgaria had the highest proportion of adoptions: 58 per 100k. In Denmark, 53 per 100k. In the UK, 33 per 100k.

All countries had debates about adoption and it went back and forth regarding the rights of the child versus the rights of parents and the right to life against the right to identity. Professor Selwyn discussed two areas: the increasing number of European countries where anonymous births/ baby hatches had been legalised resulting in confidential adoptions, and adoptions without consent.

Judge Anni Højmark – Chief Judge of Svendborg City Court, Denmark

Judge Anni Højmark started by explaining that adoption was very topical right now in Denmark because the government wanted reform. The numbers of adoptions were decreasing. In 2019 13,600 children were placed in care; 20% were placed without parental consent. Yet even though the numbers of children placed in care were decreasing, the costs were increasing.

Judge Højmark explained that she did not have data on the ages of children adopted and very few statistics in general; further there was variation in the data depending on the source. Nevertheless, the government had announced that it wanted more children to be placed in care and to be adopted – and earlier. This had been controversial.

It was eye opening to learn that the route to an adoption order is markedly different compared to England and Wales. Social services are responsible for making a recommendation for adoption. When the decision-making Committee meets, the parents participate and have legal representation. If the recommendation is for an adoption order, then the child is represented by their own lawyer. If the child is above the age of 12, he or she is also invited to come and speak for themselves. When the Committee meets, a judge acts as chairperson, with two child experts and two local politicians. Each participant has one vote. To make a care order or a recommendation for adoption, four out of the five have to vote for it.

Before the Minister for social services introduced new reforms in Denmark she spoke to quite a few former children placed in care and all of them said, strongly, that they wanted to be part of a family; it really meant something to them.

All three speakers generated many interesting and probing questions, especially Judge Højmark whose account of the Danish system came in strong contrast to the approach in England and Wales. Mrs Justice Theis started with a question: in Denmark, if parents do not agree, how long does a contested hearing last and how do parents contest the facts of a case? It was interesting to learn

that the committee meetings last two hours. If parents wish to contest facts this is done at the social work assessment stage. Parents can comment on evidence but the primary focus is on the psychological testing of the parents or child.

In light of reform happening in other countries, this prompted the question, where is the pressure to change? Professor Selwyn said that there were pressures from different places. There was a huge decrease in inter-country adoptions. This may result in pressure to increase domestic adoptions as many middle class couples wanted to adopt and the 'supply' of children from Russia and China had decreased. There was pressure from theory and research about what was best for the development of children and their need for stability, and better outcomes for adopted children compared with those in foster care. There was pressure to think about what we mean by adoption in the 21st century and how views of post-adoption contact were changing, as well as the rights of children to be separately represented and to have a voice. All this will make adoption something that will be very different in the future.

Judge Højmark agreed with Professor Selwyn that there would be pressure to increase the number of domestic adoptions as it was obvious that the Danish government wanted this as part of the child protection system strategy. However Judge Højmark also thought that the children placed in care themselves would ask for a better solution. She finished on a poignant note that although pressure would come from middle class parents who wanted to adopt, pressure would also come from the children who need a better solution.

Seminar 2 – 2 March 2021

The speakers focused particularly on what it means for an adopted child to be part of a new family and the importance of the wider adoptive and birth families on their sense of identity.

John Simmonds - Director of Policy, Research and Development at Coram BAAF

The evening began with a talk from John Simmonds, Director of Policy, Research and Development at Coram BAAF and adoptive parent to his two adult children. John spoke about the changing trends in adoption over the past few decades and the importance of permanency of outcome for children who leave care. John emphasised his fundamental belief that 'every child needs a family for life' in order to fulfil their wellbeing, prosperity and even survival. Touching on attachment theory, he discussed the relational way in which children develop during their early years and how family relationships enable children to build trust and develop their sense of belonging, which is invaluable throughout a person's life. Permanency and stability is clearly fundamental for children leaving care and John particularly commented on the growth of special guardianship orders as against adoption orders over the past 20 years, noting that 90% of SGO's are made in favour of kinship carers, and his hope that this trend would continue. He contrasted this with the 'cliff edge' often experienced by children left in long term foster care, who find themselves without the stable loving family life attained by those in a more permanent setting and called for a 'child and family centred' approach to modern permanency placements.

Amanda Boorman - Founder of @opennest

Secondly, Amanda Boorman shared her experiences as an adoptive parent and founder of the Open Nest Charity which she established in response to those experiences. She spoke powerfully of the importance for her of listening to children whilst in care and after they have been adopted. Her adopted child had longed for contact with her siblings, from whom she had been separated in the

care system, and to understand more about her birth parents. Amanda commented that whatever trauma children have already suffered to bring them into care, the act of separation from their birth family and siblings and again from foster families into an adoptive home, are in themselves hugely traumatic losses for which more support can and should be given.

Amanda shared how, despite social workers warning her not to make contact with her adoptive daughter's birth family, her child's wish to know more had led them both on a journey of discovery. Now, 20 years on, they have together created a large, interconnected family of both birth and adoptive parts. This has become the aim of her work through Open Nest to enable children to know more about who they are and where they come from. She reflected on how the narrative against contact with birth families has been fed by modern approaches to adoption 'marketing' with adoptive parents as 'saviours' of children from dangerous homes. Ultimately, she advocated for an approach to adoption not of ownership, where a child is subsumed to the new family, but of lifelong guardianship for another person's child as an act of true selflessness.

Lucy Reed - Barrister

Finally, Lucy Reed, a barrister at St John's Chambers, family law blogger of 'Pink Tape' and advocate for transparency at the family court, shared the story of her husband's search for his own birth father using modern technology. Having been adopted to two consecutive step-fathers as a child, he had never known his birth father. Once they were raising their own children, the sense of wanting to understand his own story and origins took on a new importance. In his 50s, through using a DNA testing service, he discovered blood relations he had never known existed and was able to use these connections to identify his birth father and many heretofore unknown members of his extended family tree. Although his father had sadly passed away some years before, he was able to find photographs and stories of his life from others who had known him and start to build a picture of who he was.

In light of their experiences, Lucy turned her mind to the question of what access to this kind of technology means for children being adopted today. Technology and social media mean not only can a child seek out family members but so too can members of their birth family, perhaps before a child is ready or in a place where they can be supported as they re-connect. Indeed, even where a child does investigate for themselves they may discover unpalatable truths about wider family, which might provide a different family narrative to that built up during their life story work so far. Finally, she pointed to her husband's desire to know more as a salutary reminder that the emphasis on children's life story work, although slowly improving, must not be seen as ending at 18. Indeed, if left unanswered, questions about one's birth family can and will travel with a child throughout their life.

These fascinating talks generated considerable discussion which Mrs Justice Frances Judd, High Court Judge of the Family Division and lead judge for Adoptions, chaired between the speakers. They shared a general consensus that more needs to be done to enable children to build a full picture of themselves and their pre-adoption background to enable them to understand who they are and how they fit into the world. All three speakers particularly emphasised the importance of sibling relationships for children and indeed throughout a person's life, with John describing them aptly as probably the most significant strong attachment many people will have throughout their life.

Mrs Justice Judd posed the question, to what extent should information about birth families be shared where the background is particularly complex or traumatic and whether, in some cases, contact with a birth family could be seen as destabilising to new adoptions? It was clear that

although both other speakers agreed with John that a 'blanket ban' on contact and information is inappropriate there is a need for considerable nuance on a factual basis and indeed perhaps further evidence-based research into what the effect is on children and their adoptive family units. Perhaps, therefore, the best we can do for Adoption in the 21st Century is, as Amanda implored us, to listen to adoptive children, both now and as adults, as the true 'experts by experience' and follow their example.

Seminar 3 – 3 March 2021

Professor Elsbeth (Beth) Neil - Professor of Social Work and Director of Research

The first speaker, Professor Elsbeth Neil shared her insights following her research on contact with birth families after adoption. Professor Neil emphasised that adopted children have additional needs in relation to loss and identity which are not shared by people who are not adopted, and that her research had demonstrated that an individualised approach to birth family contact can assist children to manage these issues.

Professor Neil explored the findings of a 2017 study she conducted with adoptive parents which sought to determine the actual level of contact (as opposed to the ordered or planned level of contact) between adopted children and their birth families. She highlighted that just 3% of the adoptive parents she surveyed said that their child had direct contact with their birth families, and that indirect contact remained the norm. Her study also demonstrated very low levels of involvement with grandparents, but a greater possibility of direct contact with siblings.

In further studies of the views of young people about contact, Professor Neil noted that while their views were highly individualised, generally where contact had been sustained over a period of years and was what she termed 'quality contact', young people were more likely to report feelings of happiness and satisfaction about the contact. The benefits of contact identified by young people included feeling cared about, understanding their life story and identity, and pursuing valued relationships with siblings and grandparents. In contrast, where young people were unhappy about contact, this was due largely to contact gaps or the failure of a plan for contact.

Importantly, the research had revealed no evidence that staying in touch with birth families had a negative impact on adoptive families. Young people had typically indicated that direct contact with their birth parents had not resulted in a close relationship, but had offered them an opportunity to better understand their identity and feel cared for. In contrast, direct contact with grandparents or siblings had frequently led to close relationships with adopted young people.

Professor Neil urged delegates to refrain from adopting a ubiquitous approach to contact (eg invariably ordering letterbox contact twice a year). Instead, she suggested:

- A differentiated and dynamic approach when deciding on the 'right' contact plan for a given child;
- Considering the goals of planned contact, and matching the form of contact (e.g. direct, indirect) to the goal (e.g. relationships, identity formation), having regard to a child's changing needs as they grow older;
- Focussing on positive experiences and the meaningful involvement of the people who matter to a child; and
- Thinking about more modern and flexible alternatives to letterbox contact (e.g. digital

communication).

Dr Julie Doughty - Senior Lecturer in law

The second speaker, Dr Julie Doughty introduced her research as part of a longitudinal, interdisciplinary project surveying and interviewing adoptive families in Wales over a number of years. She explained that the study presented an opportunity to build an evidence base in Wales to inform the development of the devolved National Adoption Service established in 2014. The success of a placement was measured in the study by the wellbeing of the children and of their adoptive parents determined through surveys and in-depth interviews.

Dr Doughty provided some background on the sample cohort of adoptive parents surveyed. Of the 374 children identified through the Child Adoption Records, 96 participants were recruited and completed a questionnaire. Of those, 40 agreed to participate in interviews. Three subsequent surveys were conducted at different time intervals following the placement. 68 parents were retained 45-47 months after the placement. 41% of the children in the study were removed at birth, and around a third were adopted with their siblings.

Dr Doughty moved to consider two legal themes in more detail from this wide-ranging survey. First, she discussed the adoptive applicants' experiences of the legal and administrative processes involved in adoption. Applicants pointed to delays which caused anxieties, such as local authorities delaying submitting applications to court, or adjournments caused by birth parents not properly being served with papers. Further, applicants felt that there was a lack of information and communication concerning what to expect from the legal process, or what would happen to original documents (e.g. marriage certificates) which were submitted. Dr Doughty explained that the findings in this regard led to the National Adoption Service publishing a guide to the legal process in 2017.

The second theme Dr Doughty explored was the human rights of birth parents, children and adopters. She explained that generally, adopters were positive about the need to develop their child's identity as an adopted child, and were keen to maintain contact plans with siblings and life story work.

Dr Doughty briefly highlighted other themes in the research, including:

- The need for further post-adoption support of adoptive parents;
- The higher rates of neurocognitive and mental health problems in children who had been adopted compared to the general population;
- The correlation between lower perceptions of parental competency reported by adoptive parents and higher levels of anxiety;
- The general importance of sibling relationships to adoptive children; and
- The high proportion of care leavers in the cohort of those who had children placed for adoption.

Dr Doughty concluded by highlighting recent developments in Wales, including the Good Practice Guides brought out by the National Adoption Service and the work of the 'Adopting Together' service to assist children who had been waiting the longest for an adoptive placement.

Katie and Joshua, members of the Family Justice Young People's Board

The final presenters were Katie and Josh, who were two members of the Family Justice Young

People's Board ('FJYPB'). The FJYPB has over 70 members aged 7–25 from diverse backgrounds, each with direct or indirect experience of public or private law child proceedings.

Katie explained she had sat on the FJYPB for three years, having been the subject of private law proceedings with her sister. She highlighted the recent achievements of the FJYPB, including:

- Hosting three webinars on the impact of domestic abuse on children and young people as part of the Voice of the Child conference this year, and working closely with Cafcass and meeting with the Children's Commissioner on this issue;
- Working with Cafcass to redesign the feedback forms given to children to help drive improvements going forwards;
- Highlighting the particular challenges faced by black children and young people, and raising equality, diversity and inclusion issues with board members; and
- Producing a Covid-19 information booklet for children and young people, and a guide for families on children and young people's views on video contact.

Josh explained that he had decided to join the FJYPB after attending the Voice of the Child conference. He described to delegates his experience of being adopted with his two siblings at the age of 7, three years after being taken into foster care.

Josh emphasised that he remembers two distinct feelings from the time and explained that they still affect him now. He said that fear was the dominant emotion for the first few years of his life, because he felt constantly at risk of being hurt following the physical and verbal abuse he had witnessed. He explained that one of the things he definitely did not want was contact with his biological parents, and that he had known his own mind on this despite being very young. He described, vividly, nightmares about being kidnapped with his siblings, as well as his fears of being abandoned, which remained for a long time after his adoption.

He further explained that he had an overwhelming sense of uncertainty accompanying this fear. He explained that between being carted around to school, play therapy, visitation and his temporary foster placements, he had little time to settle before being disrupted and having to start once more from scratch.

Josh then detailed his experience of the family justice system. He said that when his adoption was formalised at the family court in Manchester, though the day was a celebration, it made him feel very uneasy as he associated going to court with having done something wrong. He said he did not really understand what the legal process meant, though the judge was welcoming.

He made three suggestions for improving the adoption process for the children involved. First, Josh said it was important to really listen, and act upon, the wishes and feelings of children, even very young children, who know what they want. He emphasised that a child will only feel listened to if you show that they have been heard. Second, he urged delegates to focus on reassuring the child and ensure their safety above all else. Finally, he said that even in complex cases, it is important to reach a decision as fast as possible. While Josh acknowledged that legally, adoption is considered a last resort, he said that his case was clear from early on and should have been acted on much more quickly to avoid the extended period of uncertainty.

Josh concluded by saying that he knew he was now safe in his adoptive family, and that he has opportunities, love and support he could not have dreamed of.

Katie and Josh jointly presented the key messages they wanted delegates to consider:

- The child or young person should be consulted about the timing and venue of meetings;
- They should feel that their needs, wishes and feelings have been listed to, valued and respected by all those involved in their proceedings;
- Children and young people should be kept informed about proceedings age-appropriately, and should have the option of submitting their views directly to the judge; and
- Whether the contact suggested is truly in the child's best interests, and the impact of having contact on the child and the support they need.

Katie explained that the FJYPB had developed tips for social workers concerning direct contact with children, including how to assist children in feeling comfortable to discuss personal issues and how to sensitively share information with others. Josh challenged delegates by asking what more they could do to reduce the fear and uncertainty that many children and young people feel during proceedings.

HHJ Probyn thanked all the speakers, but in particular thanked Josh and Katie for their powerful presentation. She asked the speakers for their ideas about making sure children are heard in proceedings.

Josh said that it was very important to make sure a child is listened to and treated as an individual, highlighting that even very young children can know what they want. He explained that he had seen his case files, and noted that often, someone had written down his wishes but not acted on them. Katie agreed, saying that there is a difference between being heard and being listened to, and urged delegates to act on what children tell them rather than merely 'ticking a box'. She said it was important to let a child know why in the event that their wishes cannot be acted upon.

Professor Neil added for younger children who cannot yet verbalise how they are feeling, it was necessary to pay attention to children's behaviour (eg being frightened of their parents).

HHJ Probyn turned the discussion to whether, in terms of managing contact, social media and new formats are helpful, and whether that is something children and young people might be more comfortable with.

Katie and Josh agreed that it would depend on the individual child. Katie added that her generation had grown up with social media and that this shaped young people's attitudes towards it. Professor Neil added that her research had explored young people's views of social media, and said that it could feel more normal and immediate – it allows for a more 'little and often' approach to contact. She contrasted this with the build-up sometimes felt by children prior to a once-yearly contact with a birth parent in person. Professor Neil also highlighted that social media can present new risks, in that a conversation can move unusually quickly.

HHJ Probyn asked each of the speakers to share one particular message they would like the professionals who work with children to take away from the evening.

Professor Neil urged professionals to ditch the 'cut-and-paste' mentality and look at every child as an individual with their own needs. Dr Doughty encouraged professionals to consider the ongoing support given to adoptive parents to prevent problems from escalating. Katie said that if a professional is working with a group of siblings, what might be right for one might not be right for another. Josh highlighted the need for longer term support, and not just leaving a child once the adoption order has been made.

The Annual Bridget Lindley Memorial Lecture by Baroness Hale of Richmond 4 March 2021

What do we mean by a family now?

The final lecture was chaired by President McFarlane who praised the quality of the presentations and the perspectives offered which had teased up a range of questions. The President was struck that the developing thoughts about adoption might offer some potential answers as to why the data showed the number of adoptions to be decreasing. It may be that a re-thinking was being undertaken across the board. In particular, the President stated that he took a lesson from the previous lecture regarding the damage of delay on young people, already damaged by the circumstances of their home life, who have to wait a significant amount of time before finding their adoptive home.

The President reminded us that that this lecture was in memory of Bridget Lindley whose family were present. The President acknowledged the importance of Bridget's work in the Family Rights Group and her contribution to families and family law over recent decades. Bridget was blessed with an intellect that would have seen her rise to the highest levels in any legal department in any firm and had a heart and soul of equal measure.

Introducing Baroness Hale, he acknowledged her remarkable career spending her life as a family lawyer and academic and later becoming a judge, rising to the House of Lords, now the Supreme Court, and then to become President of the Supreme Court. The President stated that all family lawyers were proud that one of their number was seen to have such quality and be valued so highly. There would be many legacies from Baroness Hale's career but perhaps the most valuable would be that of a role model to young people and those aspiring to become family lawyers.

By way of introduction, Baroness Hale began by paying tribute to Bridget Lindley, who she described as a 'beautiful, brainy and brave fighter' in the cause of championing the right to respect family life. Indeed, the focus of the lecture, 'what do we mean by a family?' was chosen by Baroness Hale out of respect for Bridget Lindley, whose work with the Family Rights Group she described as having greatly enriched our idea of what it means to be a family.

The lecture commenced with Baroness Hale describing the role of law in family life as threefold: firstly, in defining the relationships which count for legal purposes, secondly, in granting formal recognition (with legal consequences) to relationships which would not otherwise have them and thirdly, providing remedies when things go wrong or the need arises.

Baroness Hale spoke about the changing landscape of the legal framework, and legislative developments, spanning the decades. She commented that for most of our history, children born to parents who were not married to one another had no legal relationship with their fathers or with their father's families and only a limited one with their mothers. Baroness Hale cited s 1 of the Family Law Reform Act 1987 as a momentous change to that restrictive definition, meaning that references to relationships in legislation and legal documents were to be construed without reference to whether or not anyone's parents were married to one another.

This Act also began the trend towards recognising the husbands, civil partners or unmarried partners of children born using donated eggs and sperm as their other legal parent, eventually including the children of female same sex couples. But the woman who gave birth was always the mother, whether or not the egg was hers. The law now recognised three different types of parenthood: genetic, gestational and social or psychological.

In regards to formal recognition and status, Baroness Hale first drew attention to the changes to marriage and civil partnership and how the law had now moved on from the notion of marriage as between one man and one woman. She cited legislative milestones such as: the Local Government Act of 1988, the Civil Partnership Act of 2004, the Marriage (Same Sex Couples) Act of 2013 and the 2018 case of *R (Steinfeld and Keidan) v Secretary of State for International Development* [2018] UKSC 32, [2018] 2 FLR 906 which gave same opposite sex couples the option to have a civil partnership.

Other ways of granting formal recognition were adoption and parental orders for commissioning parents in surrogacy arrangements. Adoption has been with us since 1926 but it was not until 1975 that an adopted child was treated in law in exactly the same way as a birth child, becoming a member of the adoptive parents' families as well as their responsibility. Further, adoption and parental orders were now open to both opposite and same sex couples, whether or not they were married or in a civil partnership, provided that they were 'living as partners in an enduring family relationship', as well as single people. Baroness Hale also drew attention to the changing attitudes to surrogacy and the courts' sympathetic approach. Of note was Baroness Hale's view that the 'next frontier' may well be whether a child can have more than two parents and parental kin.

Baroness Hale turned to address Family Court remedies and in particular, the increase in cohabitation outside marriage or civil partnership, and the impact on couples who have no financial remedy to sort out their home and finances when their relationship ends. Furthermore, turning her attention to the growing numbers of members of religious faiths other than Christianity who celebrate a religious marriage which is not recognised in the law of this country, she asked: are these couples not equally deserving of a financial remedy?

It was clear, Baroness Hale concluded, that our concept of what constituted a family recognised by the law had changed dramatically in recent decades. The old concepts of affinity – marriage – and consanguinity – blood relationship – were no longer sufficient to define what we meant by a family. Baroness Hale described the driving force behind these changes as human need: most people wanted to form enduring intimate relationships if they could and most people wanted to have children if they could. Finally, Baroness Hale concluded, the law was prepared to recognise – even to facilitate – a much greater variety of ways in which to fulfil those human needs than it did in the past.

Questions

A theme of discussion following Baroness Hale's lecture was how family law might continue to evolve. The President noted that a topic which had arisen from the series of lectures was the importance of sibling relationships which were not given express priority in statute law. Baroness Hale considered that the family courts should be increasingly conscious of how important siblings were in family life and to children who had been deprived of so much, and pointed out that it was possible for the court to make orders to ensure these relationships were recognised and fostered. This included half-siblings, step-siblings and non –siblings, all of which could be recognised if there was the will to do so. The President considered that the family court could put more emphasis on sibling relationships.

The President questioned whether adoption in law and practice now would be the same in 20 year's time, and in particular the model of confidentiality and dispensing with consent of parents. The earlier lectures discussed the impact of social media eroding confidentiality which could make adoption more challenging. Baroness Hale stated that in her view social media had transformed the

landscape for a lot of areas of the law where we had assumed it was possible to keep things confidential which was no longer possible. If this was the case, then does the law try to keep the tide back or does it ask what is actually best for the parents and children in that situation? Will the law have to provide a different kind of adoption or not adoption at all, or does it mean that more inclusive people will have to be persuaded to come forward as adopted parents? Adoption had developed, legally and socially, ever since it was invented and was unlikely to stay still.

In response to questions from the audience, Baroness Hale stated that she did not know if open adoption and maintaining links with a child's birth family would ever become the starting point in adoption law. If that was so, then the court would need to consider whether the case was suitable for adoption at all. Baroness Hale reminded us that there was a choice between adoption and another solution, such as special guardianship, and questioned whether the law would continue to regard children as having only two parents. This would be a radical notion but could it be the next frontier? At present the adoption model was binary and whilst it could be reconceptualised to have a more normative role in promoting open options, there needed to be clear legal consequences for adoption. There could be a system of full and simple adoption, however this was very similar to the current adoption model and special guardianship and so perhaps was not necessary.

Another theme of the discussion was the subjective view of the child; their views of who their parents were. Baroness Hale considered that this is a crucial aspect. One example of the subjective experience of the child leading to a change in the law was the recognition in law of parents whose children were born as a result of assisted reproductive techniques. There were limits in how far the court could go with automatic recognition because family arrangements were so various but Baroness Hale noted that this was why we had adoption, parental orders and special guardianship orders, the purpose of which was to provide a range of solutions to recognise a child's needs and their relationships.

Baroness Hale was asked how important relationships could be maintained when there were such limited resources for contact in care proceedings. Baroness Hale thought that this necessitated increased thought and caution before separating children from their parents. The President pointed out that the Care Act 2014 required the court to consider contact arrangements before making a final order and if such arrangements were inadequate to maintain the relationship, then that had to go into the balance to decide whether a substantive order should be made.

A question from the audience asked what needed to change so that practice reflected the intentions of the Children Act 1989 after the Care Crisis Review found consensus that it was not being implemented consistently. Baroness Hale acknowledged that all studies had shown great regional variations in practice and the threshold for taking a child away from their family and the effort put into finding alternative solutions differed between different parts of the country. She considered that local authorities could be more consistent in practice and adopt models where they tried to solve the problem rather than removing a child, to avoid the need to resort to court. The President confirmed that the Public Law Working Group (whose report was due to be published) had been looking at improving practice, a lot of which had been informed by good practice in local authorities. The aim of the report was to provide a blue print, based on good practice for each of the 152 local authorities, in order to ensure that their work and cases were prepared in accordance with it. The emphasis was on supporting local authorities to work with families and only resorting to court when there was an absolute need and the case being prepared with the local authority having undertaken assessments that would be required by the court.

On a different topic, the President asked what could be done to educate the public as to the

meaning of child arrangements orders, and the shift away from custody and access, and whether this required a further change in the law. Phrases such as 'custody' and 'access' were often used by politicians and the press and were in the minds of many parents who attended court to have disputes about their children. There was now a perception of a first and second class distinction between 'lives with' and 'spends time with'. Baroness Hale stated in her view the first step was to get the legal profession on board before the public could be. The President considered that what was needed was a wider public education programme and the report published by the Family Solutions Group, 'What about me?' had gone some way in this regard.

Closing

The President closed the lectures by giving thanks to Baroness Hale and all those who had given lectures and members of the FJC who had arranged the seminar with such efficiency. The President concluded that life had changed and the law had moved on, and the lectures had shone a light on that. The FJC exists to raise eyes above the mundane and these lectures had certainly moved forward the discussion of what adoption looks like in the 21st century.

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