

Improving children's lives: Holding on to what matters during the technology revolution

Bridget Lindley Memorial Lecture
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Introduction

Thank you to the President, and to the Family Justice Council for inviting me to speak at this annual conference.

It is a great honour to be asked to give this year's lecture in memory of Bridget Lindley, who died 10 years ago this very week. She was just 56.

I am sorry that I never got to know Bridget. I think I would have admired her courage and her forcefulness and (what I'm told was) her willingness, on many occasions, to be the dissenting voice in the room.

Despite having never met her, I am confident that she has had an impact on the work of the Nuffield Family Justice Observatory.

We are a small team. One member of our team, Jude Eyre, was taught by Bridget as a law undergraduate. And another, a much-valued associate, Mary Ryan, worked with Bridget for eight years or so at the Family Rights Group.

Jude and Mary remember Bridget as someone who believed that you could never judge what was going on for a family simply by reading about them on paper. That you should always look beyond your initial assumptions. She was someone who was deeply committed to justice. She stood up for families, but not out of sympathy. Rather, Bridget felt deep empathy for children and parents in the family justice system, as fellow human beings.

I like to think that Bridget's determination to see the family justice system from the perspective of the people it serves, is something that we carry forward in our work at the Nuffield Family Justice Observatory. And I hope today's speech will do justice to her legacy.

Being guided by what really matters

One wonders what Bridget would have made of the world we live in today. It is unrecognisable in some ways. Our daily interactions with each other have fundamentally changed in the last 10 years. We speak on video calls, we correspond by WhatsApp and we have become used to messaging AI chatbots rather than speaking to customer services.

We are amid a revolution in the way we use technology in our daily lives. And the pace of transformation is extraordinary. In the past three years alone, since the launch of ChatGPT we have seen generative AI become part of daily life, at least for many.

Now I must confess from the outset that I am neither a technophile nor a technophobe. I am curious about new technology, but I am also a bit prone to hold on to old ways of working. I have absolutely no data to back this up, but I think I am probably in the majority: sitting somewhere between being interested in, and being a bit reticent about, using new tech whether it is AI, virtual reality or 3D printers.

So, today's lecture is not an attempt to persuade you of the power of technology to transform our lives. Nor am I going to dwell on the many (and serious) risks associated with modern technology. There are others here today better qualified than I to talk about such issues.

Instead, I want to reflect on how we think about the technology revolution when it comes to the family justice system. What values or principles do we turn to, to guide us as we navigate these immense changes?

I am going to focus on how we respond to the development of artificial intelligence. I recognise of course that we are experiencing a technology revolution that is about much more than AI. As the current debate on children's use of smartphones suggests, our relationship with all sorts of tech is complicated.

But with AI we are at a particularly interesting moment in history. It feels like we are at a crossroads. And it can seem like there are only two roads ahead.

Should we double down to defend the family justice system against the dangers of artificial intelligence?

Or should we try to harness AI to create the family justice system of the future?

As the title of my speech suggests, I believe that, as we navigate these questions, we need to be guided by what really matters. And what really matters to us in the family justice system is improving children's and families' lives.

AI is not something that is about to happen to the family justice system, it has already started

Seven years ago, I started work at the Nuffield Family Justice Observatory. Having only ever stepped inside a family court once before at that point, I had a lot to learn. So, I asked to sit in, to observe proceedings at several different courts. There was one particular judge who I found very inspiring. I was in awe of the way he ran proceedings, his interaction with families and his knowledge of – and his ability to engage with – public services beyond the court.

What I was not prepared for, was the way he used technology. Or rather, the way he didn't. At the end of the day, he showed me the handwritten notes that he had taken during proceedings which he was going to take home that evening for his wife to type up.

Most judges I have met since are a bit more tech savvy. But let's be honest, the family justice system has never been at the forefront of embracing new technology. We don't expect to be earlier adopters. We are more used to other public services testing out new technology before we give it a go.

With artificial intelligence though it is different. AI is not something that is about to happen to the family justice system, it has already started to become embedded within our system. We may not realise it, but we are all using AI in search engines, predictive text and image recognition. Whether we like it or not, court documents frequently contain AI-generated content – as a result of social workers using transcription tools, lawyers searching for case law, or litigants in person using ChatGPT to generate their submissions.

Family courts are not AI-free spaces.

But that does not mean we can't shape how, when and why AI is used.

So, what's the way ahead? Now debates about AI in the family justice system fall into two different narratives.

The first says: we need to protect the family justice system from the risks of error, bias and loss of privacy that come with the use of Generative AI (like ChatGPT). That's the narrative that sits behind the various pieces of guidance that have been issued.

The second says: we need to embrace AI to help us deliver a timelier justice system. That's the narrative you hear from the Ministry of Justice and others who are urging us to embrace time-saving efficiencies.

I think both narratives have something missing. They don't start with the purpose of the family justice system. And they don't reflect our collective ambitions for the future – beyond making the family justice system work faster.

The purpose of the family justice system is to improve children's and families lives

We don't talk about the purpose of the family justice system very often. Perhaps that's because it is obvious that it is about improving the lives of children and families.

Certainly, the judges, magistrates, solicitors, barristers, guardians and social workers that I have met during my time at the Nuffield Family Justice Observatory have been deeply committed to that purpose. And I believe that's why you are here today at the Family Justice Council's Annual Conference.

But I think from the outside it is not obvious that is what the family justice system is for. It is certainly often portrayed as something different in the press and the media. And I have not been able to find a Ministry of Justice or a Department for Education policy document that describes the family justice system in quite those terms. It may just be a matter of time. The Ministry of Justice and Department for Education have committed to publish a strategy for the family justice system later this year – so that will no doubt set out its purpose.

But in the meantime, I thought I would ask ChatGPT what the family justice system in England and Wales is for. After all, a large language model like ChatGPT can trawl the internet for everything that has been written about the family justice system and summarise it in a pithy sentence.

ChatGPT said: 'Its main purpose is to protect children and resolve family conflicts fairly and safely.'

Of course, that's true. But it doesn't fully capture the purpose of the family justice system, does it?

Our responsibility to children and their families does not begin and end with ensuring their safety. We care about all aspects of their well-being now and into the future.

And in taking difficult decisions about who has responsibility for the day-to-day care of a child, the family justice system seeks to ensure not only that they are safe, but that they have the best chance to thrive in life.

Whether our interaction with families is fleeting or long-term, we collectively make decisions that can have life-long consequences, and we do so with the best intent to improve the lives of children and families.

How can artificial intelligence improve the experiences of children and their families?

If Bridget Lindley was standing here, I think she might remind us that we don't always live up to this description of the family justice system. She might point out the ways that we don't serve children and families well.

The fact that children often report feeling outside of the process, while decisions are being taken about them.

That court proceedings can be confusing, disorientating and alienating for parents.

That a system which, by definition, witnesses people at one of the most vulnerable times in their lives, can unintentionally add to their distress by being difficult to navigate and disempowering.

Which takes me back to how we see the role of artificial intelligence in the family justice system.

If the purpose of the family justice system is to improve the lives of children and families, then our first question should be: 'How can artificial intelligence improve the experiences of children and their families?'

We might ask:

- Could AI help rewrite legal jargon in plain English to make court documents much more accessible for children and families?
- Could AI be deployed to help power simulations of family court proceedings so parents can be better prepared for what to expect?
- How do we deploy AI so a child or a parent only has to tell their story once, not over and over again, to different professionals?

This, then, becomes our guide star. How can we harness AI to create a family justice system of the future that is centred on what children and families need – as they experience the family justice system?

Of course, new technology is not the reason we need to change the family justice system. It might just offer us the opportunity to address some longstanding problems. We found this during the pandemic, when Nuffield Family Justice Observatory undertook several large-scale consultations to find out how families and professionals were experiencing remote hearings. Some of the problems that parents described – of not feeling heard, or not understanding what was going on in proceedings – weren't problems created by video technology, they were already present in in-person hearings – they just became more obvious.

We need the family justice system to work for the people it serves. This should be our guide.

Technology doesn't just change what we can do, it changes what people expect

Because if we don't put children and families front and centre, there is a real danger that AI will only be deployed – as it is across other public services – to make economic efficiencies in the face of tightening budgets. That would not necessarily result in better experiences for children and parents, just quicker experiences.

Don't get me wrong, faster public services is exactly what the public expects, particularly in family justice, where delay means prolonged uncertainty for a child. But it is not the only way our expectations are changing because of new technology. We are not looking for the same service, to be done more quickly. Our expectations of what services should do are also changing.

Think about it. We used to wait once a month for a bank statement to arrive in the post, now we expect to track our spending on our phones in real time.

We used to send letters to relatives in Australia using airmail, now we can FaceTime them in seconds.

Technology doesn't just change what we can do, it changes what people expect.

And expectations of the family court are also changing.

In an age when you can point your phone at a restaurant menu in Madrid and instantly read it in English, or indeed in any other language, why shouldn't families be able to access court documents in their preferred language? Especially as we become a nation of increasing diversity. Last year, 4 in every 10 babies born in this country had at least one parent born outside of the UK.

In an age where your medical records are updated instantly on your NHS App, why shouldn't parents be able to access judgments on the day they are written?

And when you can track a parcel being delivered to you at every stage across the world, why can't you find out when your next court hearing date is via a mobile phone app?

Everyone's expectations are changing, but there is also (of course) a generational effect. Today's 10-year-olds – who can barely remember a time before ChatGPT existed – are tomorrow's parents. Their expectations of the family justice system will be significantly different to ours.

So, if we are to keep pace with what citizens expect of a modern family justice system, we need to ask children and families what they want. Not as part of an occasional research project, or a one-off request to the Family Justice Young People's Board, but as an ongoing dialogue with the users of our system as we navigate the technology revolution together.

Because if we don't address the gap between what children and families will start to expect – and what the family justice system can deliver – it will soon threaten its legitimacy.

Keeping up with expectations

Let me give you an obvious example of a part of our system that has already lost legitimacy because it has not kept up with our expectations in this technology revolution: the way we manage contact between adopted children and their birth family. My adopted children were placed for adoption by the family court here in Birmingham. In line with what was asked of us, we wrote a letter twice a year to update their birth family on their progress. After five years or so we received a bundle of letters in the post marked 'return to sender'. The address that we had been given by the local authority was no longer a council building and so some of the letters we had sent had not been forwarded. Later, the local authority switched to sending letters via email rather than by post, but they did not have the email address of this family. When our children turned 18, they joined the Adoption Contact Register to try find their birth family, but no match was found. In the end, I'm pleased to say, it took one of them no time at all to find their birth parents on social media. The 'letterbox' system is clearly defunct, although it still operating in many areas.

Another example where the legitimacy of our system is coming under threat is in relation to litigants in person. Four out of five cases in private family law proceedings involve at least one unrepresented party. Now that a lawyer is not available to them, the first port of call may be ChatGPT, Microsoft Copilot or Claude.

But relying on generative AI to draft your submission currently comes with significant risks. We know that large language models are prone to error and to 'hallucinations', whereby information is simply made up. And it is unrealistic to expect litigants to be able to verify legal information provide by AI chatbots.

[Incidentally, it is not only litigants in person. Sometimes lawyers struggle to verify information generated by AI. There have already been several cases where lawyers have been caught out. I asked Microsoft Copilot to give me some examples. It told me that a lawyer in the US Supreme Court had mistakenly cited Captain Kirk (of Star Trek fame) in a legal submission prompting all sorts of comments about intergalactic interference. It turns out this story was fabricated. So, AI even hallucinates about hallucinations!]

But back to litigants in person. In addition to problems with accuracy there are also privacy concerns when litigants use AI: any personal data shared with a large language model is used to train the model, so it may feature in outputs that are shared with other users.

So, it is not a good idea for litigants in person to use AI tools. But it is equally unreasonable to expect them not to use AI. After all, it may be a litigant's ONLY source of guidance or assistance. It may be wrong, but at least ChatGPT gives the impression of listening to you and answering your questions.

This problem has recently started to gain more attention, although not really because litigants in person are being badly served by a lack of affordable legal advice, as that problem has been with us for a decade or more. Instead, there are growing concerns about the impact that AI will have on the volume of cases received by the family court. AI can easily transform a mass of information into an arguable legal claim, which may encourage more parents to go down this route.

So how can we help litigants in person who have every right to have their case heard in court?

Many of you will be thinking there is a clear answer to this problem: bring back legal aid! Parents need access to a lawyer at the earliest opportunity to have guidance and advice that can steer them towards an appropriate course of action.

But while we are waiting for legal aid to be restored, should we not be advocating for a tool that combines the accessibility of AI with the safeguards of having human oversight?

Could a closed AI system be trained by lawyers to give guidance to litigants in person, using a combination of machine and human, because of the need for a bespoke response to individual circumstances?

Given the vast chasm that currently exists in legal advice for litigants in person, surely this would be better than the status quo?

Some of the current flaws in AI will not change unless we start to change

Of course, imagining how children, families and professionals might use AI in the future is something of a fool's game. How can you anticipate how things might be in 10 years' time when we cannot imagine what tech might be capable of in 10 months' time?

Many of the AI tools we talk about today will become integrated into our systems and before long we will stop naming it. No one says 'powered by electricity' anymore — and soon, we won't say 'powered by AI' either as it slowly becomes incorporated in all the software we use.

One thing for certain is that we should not expect that all the flaws of today's technologies will remain. Artificial intelligence will continue to evolve. So we must open to a future that we can't yet see, but where AI is capable of much more than today.

Nevertheless, some flaws in AI will not change, unless we start to change. Take the problem of bias. When machine learning is used to analyse historical case data to predict various risks – such as whether a young person is vulnerable to gang exploitation, for example – it is using data that is reproducing existing biases in human decision making – such as racial bias.

So, using AI in these circumstances threatens fairness and justice for children and families. But so does human decision making. AI is a tool that can be used with oversight by humans, but human oversight won't be enough to ensure fairness unless our biases are recognised and challenged.

So, where should we draw the line on the use of AI?

When it comes to making decisions about the lives of children and families in the family justice system, surely only intelligent humans have the empathy and the values to be up to the task? We certainly like to think so. The absence of emotion in machines make them ill- equipped to usurp our role in the uniquely human business of intervening in family relationships.

The question of whether a machine, powered by artificial intelligence, could ever be empathetic is an interesting one. On the one hand, the idea is preposterous. While machines can match or even exceed human cognition, they cannot think or understand. AI systems cannot put themselves in the shoes of humans and vicariously experience their emotions.

But – as the proliferation in the use of AI for emotional support shows – AI is remarkably good at faking empathy. I typed this sentence into ChatGPT: 'I am feeling anxious about giving a big speech in front of the President', and it said, 'That's completely understandable. Speaking in front of the President is a high-pressure situation', before giving me some tips on how I could prepare.

It is entirely feasible that before long, AI systems will be able to respond in a way that will appear to be more empathetic than humans – by using a combination of generative AI, emotional and psychological processing, and text-to-speech technology. If machines get better at decoding body language and voice cues, then they will get better and better at seeming to be empathetic even if they don't actually feel anything.

Which makes you think: how do we know if a human is empathetic or just good at faking it? It throws down the gauntlet to us as humans – if the thing that distinguishes us from machines is that we can empathise for other human beings, we better be very good at it! And if AI can fake empathy convincingly, and we need to outperform the machines, it is quite a challenge, because they don't get tired or hungry!

Could AI ever be used for judicial decision making? I hesitate to ask that question in front of the President.

But it is a topical question and one that the Master of the Rolls recently addressed in a speech. He argued that AI *could* replace judges – at least in certain cases. The example he gave was assessing personal injury damages – a task that would take artificial intelligence a couple of minutes to do, while the current wait for a judicial hearing and determination might be more like two years.

At the same time, he cautioned against judicial decision making by machines for three reasons. He noted that machines could get it wrong, and given that judicial decisions are the ultimate authority, and there is currently no method to overturn AI-generated decisions, this was inherently problematic.

Secondly, he questioned whether machines could ever fully mimic a human's emotion, empathy and insight. As I've said, that is certainly the case at present – but who knows in future?

And thirdly he noted that, if decisions are made by AI, they are generated from the state of intelligence at a given point in time, without the application of developing human thought. He wondered whether we would regard it as appropriate for the law of the future to be based on past intelligence without the added input of human reflection and consideration.

To be clear, no one is currently proposing to replace judges in family law with a machine. It is one of the areas of law that seems least likely to benefit from AI-driven decision making. Certainly, if we start from the principle that we should ask children and families what they want, we will not be replacing family judges with AI anytime soon. Public Attitude Surveys suggest that, while AI is gaining popularity when it comes to low-risk tasks, it faces major resistance from the public in emotionally complex legal areas, which covers almost all of family law. I've never met a parent who wants a machine to decide who their child should live with. And I imagine children and families would tell us that they would prefer MORE human interaction in court proceedings, not less.

Personally, I think we could spend a lot of time debating whether, at some point in the future, some aspects of judicial decisions could be made by AI when there is a danger, we overlook a much more pressing concern: the need to improve children's and parents' experiences of the family justice system.

However, this question of whether humans need to be making the decisions about children's and families' lives also requires us to raise our game. If humans are more empathetic, more attuned, more nuanced and more sophisticated than machines, then we have got to make sure we meet this standard.

Who speaks on behalf of children and families in the debate on AI?

Naturally enough, amid this technology revolution, we all feel a bit threatened about what it might mean for us as professionals.

It can make us defensive of our position. Research by Daniel Susskind has found that professional groups consistently underestimate the impact of AI on their own profession – we like to think it will affect other people rather than ourselves.¹

When it comes to AI, it can feel particularly threatening because we are dealing with change at a global scale.

But those working in the family justice system do have professional bodies speaking up on their behalf. It is possible to shape our work environments. As we found with the sudden shift to video hearings during the pandemic. It was difficult, it didn't always work as we wanted, but we have quickly adapted to new ways of working, learning when and when not to use virtual hearings.

Who, though, speaks on behalf of children and families in the debate on AI in the family justice system?

Other than organisations like the Family Rights Group and the Family Justice Young People's Board, it is not immediately obvious who is championing the needs of children and parents in this debate.

This matters because there is an obvious danger that we use AI to make the system work better for us as professionals, while overlooking what that means for children and families.

One of the reasons we remember Bridget Lindley is that she was a lawyer who spoke out for families. She held both her profession, and families, in mind. And thankfully she is not alone – we have many wonderful lawyers, judges and social workers who do the same.

But I do wonder whether we need to be more mindful of this obvious power imbalance in who might benefit from new technologies.

What we can do

It might feel like none of us has much agency in this technology revolution, that we are all bobbing about on a sea of uncertainty and change.

So, what can we do as individuals?

¹ See: <https://www.danielsusskind.com/a-world-without-work>

Thankfully I don't think we all need to be technical specialists in artificial intelligence. But we do need to be involved in thinking about what sort of world, society and public services we want in the age of AI. It's not enough to point out all the problems with artificial intelligence, we need to lean in and shape how and when we use it.

Does that mean we need more pilots to test out ways of using AI to help children and families in the family justice system? I think it does. At present this sort of innovation is left to a small number of pioneers. It is very difficult for busy courts to pilot radical new approaches, so innovation will largely come from the fringes of our system. But we perhaps need a more coordinated approach. Today's conference is a good example of what we need to be doing – reflecting on existing innovation, sharing new ideas and learning together.

Luckily innovation in AI is not in short supply – the UK is world leader. We're told that 44% of Europe's lawtech startups are based here, for example. So, there is plenty of talent to draw on. But it is also about how we approach innovation: making sure we are testing how AI tools are experienced by children and families, not just whether they are making our lives easier, as professionals.

Above all, what we can all do, as individuals, is speak up for children and families – just as Bridget Lindley did. And we can all find ways to bring children and families into the conversation about what we want the family justice system of the future to become.

At the beginning of my talk, I asked the question – what values or principles do we turn to, to guide us as we navigate this technology revolution? My colleagues at the Ada Lovelace Institute will tell you there are already many different ethical frameworks being used to try to ensure that artificial intelligence is safe, transparent, accountable, and fair.

But my answer is that the family justice system already has a set of values and principles that come with our mission to improve children's and families' lives: they include empathy, curiosity, equity and justice. And it is holding on to these values and principles, being true to the purpose of the family justice system, that will help us navigate change.

Making sure that AI works for our purpose as we hold on to what really matters

Finally, in the spirit of full transparency, I should acknowledge that artificial intelligence WAS used in the writing of this speech. By now that will be obvious to you. Of course, I double checked my facts and I spotted some hallucinations. Whether it turned some of my clunkier sentences into more eloquent prose – well, I will leave you to be the judge.

What I would say is that artificial intelligence assisted but I led the process – and I had a strong sense of purpose. That – I believe – is how we should approach AI in the family justice system. During this technology revolution, we must make sure that AI works for our purpose as we hold on to what really matters – improving children's and families' lives.

Thank you.

Lisa Harker
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