# PRESS CONFERENCE

# on

# MODERNISATION OF FAMILY JUSTICE

# by

# MR JUSTICE RYDER

**held by**

**THE LORD CHIEF JUSTICE OF ENGLAND AND WALES**
**(Lord Judge)**

**LORD JUSTICE GOLDRING**
**(Senior Presiding Judge)**

**and**

**MR JUSTICE RYDER**

**on**

**Tuesday 31 July 2012**

**at**

**THE ROYAL COURTS OF JUSTICE**

**THE STRAND**

**LONDON**

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Tuesday 31 July 2012

**STEPHEN WARD:** The rule with any press conference with judges is that they cannot talk about individual cases or other individual judges. Today's press conference is only about the report itself. So any other wider questions you might like to ask the Lord Chief Justice, either ask us in the Press Office if you want an answer now, or if you want to ask more widely, the Lord Chief Justice will be holding a Press Conference later in the year, as he does every year.

The Lord Chief Justice is in the centre, as I am sure you all know. On his right is Lord Justice Goldring, the Senior Presiding Judge, who is in charge of judicial efficiency; and on his left is Mr Justice Ryder, who wrote the report and is Judge-in-Charge of Modernisation of Family Justice and has been for the last eight months.

**THE LORD CHIEF JUSTICE:** Good morning everybody. Welcome to the launch of these proposals for the Modernisation of Family Justice which are contained in this admirably succinct report from Mr Justice Ryder which is published today.

The context may be well-known to you, but it is worth just reminding ourselves of it. In November 2008 the case of Baby Peter came to public attention. This notorious and tragic case led to a very substantial increase in the number of applications by local authorities for children to be removed from one or both parents and

taken into care. In 2008 there were just under 20,000 children involved in these processes. In 2011 the figure is just under 30,000. These are, as you can imagine, very sensitive, difficult and anxious cases, and the decisions made in them will often change the course of the life of a child or children. They involve assessments of risk of future harm to one or more children, and the extent and form of that harm. They will also involve the authorities of the State in effect moving in and removing a child or children from his or their parents, or one of them -- a step on every occasion that it is taken, of huge consequence, and a power to be exercised only when necessary. The decisions, as one can imagine, are exceptionally burdensome and require the utmost care.

The huge pressure on the family justice system led to unacceptably long delays. For a child, any delay represents a substantial proportion of his/her life, and it is not acceptable. The increased work highlighted the need to overhaul and modernise the way the family justice system operates.

In February 2010 Mr David Norgrove, recently appointed as Independent Chair of the Family Justice Board and welcomed by the judiciary to his new responsibilities, reviewed family justice. On 3 November 2011 the Family Justice Review was published. On the day before, in anticipation of publication, the President of the Family Division appointed Mr Justice Ryder as Judge-in-Charge of Modernisation for Family Justice. In February 2012 the Government published its response to the Review, and today we are offering our judicial

response to the Review together with proposals to modernise the family justice system. These proposals complement the Review which emphasise the need for change in the culture in which the family justice system operates. Mr Norgrove emphasised the importance of the judge's role in changing that culture. I entirely agree with his assessment and the importance to be attached to the active participation in the management of these cases by the judges. The traditional model of the judge as a passive arbiter, holding the ring between the protagonists, allowing the parties to adduce whatever evidence they wish, and however relevant it may be to the ultimate outcome of the case, or not, will change. Although an additional 8,000 days for family work has been allocated in the last two years, of itself that is not enough to address these problems.

This process has been tried in the Crown Court. Active case management is part of the judge's daily responsibility. It has produced improved efficiency in the criminal justice process, without any consequent diminution in the quality of justice administered there.

Of course, the objective is to improve the quality of justice for children and the parents who are affected by these difficult decisions. The ambition, to reduce delay, cannot be achieved by the judges on their own. Hugh efforts will be required from the different parts of the system, including in particular CAFCASS and local authorities. There is a measure of shared responsibility for the improvement that we all require.

I am very pleased to endorse the proposals in Mr Justice Ryder's report and to underline that they represent the consensus view of the judiciary about the way in which some of the difficulties in the family justice system should be tackled.

I do not propose to summarise the executive summary. You can see it all for yourselves. A short note will be made available for those who do not have it.

I now invite Mr Justice Ryder, on my left, to make his contribution.

**MR JUSTICE RYDER:** Good morning. There have been many reviews of family justice over the last twenty years. Too many of those reviews are gathering dust on shelves. I am anxious not to add to their number. That is why I have concentrated on finding agreed solutions to the problems identified.

My optimism that this report will not share the fate of others comes from the judges, lawyers, social workers and experts who have talked with me as I have gone around the country over the last eight months. I have not known such a strong consensus for change in my time on the Bench or at the Bar.

There is a clear recognition that a change of culture is required to root out unnecessary delay while maintaining the quality of the decisions we make. We have an obligation to provide better access to

justice for children.

To do that the judiciary must be prepared to set the example: to lead a reform programme. Judges cannot manage change on their own; we need the active help of everyone else in the family justice system. The last decade has not been short of innovative ideas but the key difference now is that the judicial modernisation programme is part of a wider drive for reform that critically includes a Government commitment to legislation and significant change in good social work practice arising out of Professor Munro's reforms. The Family Justice Review represents the biggest change to the family justice system since the Children Act 1989.

The vehicle for achieving this fundamental change in culture in the courts is the creation of the single Family Court. The Family Court represents a once-in-a-lifetime opportunity to change the way that judges, magistrates and legal advisers work. For the first time we will all be working together in one court where there can be a consistent application of rules and evidence-based good practice.

If we want to eradicate unnecessary delay we must be prepared judicially to manage the workload of the court by matching cases to judicial resources and providing for judicial continuity. Once allocated, individual cases must be robustly case-managed and that means judges controlling welfare timetables, focusing on key issues, requiring quality analysis and scrutinising experts. As the Lord Chief Justice has said, the role of the judge will move from that of

the traditional referee to that of an active case manager.

Much of what I have recommended has already been tried and tested. The challenge now is how to make everyone familiar with evidence-based good practice and how to get them to achieve the practice and approach of the best. Quality assurance is best achieved by education and example and that will be a team effort, but once good practice is identified there will also need to be a new culture of compliance. Too many case management orders are not complied with and there is a need for effective sanctions, including, in the rare case, fixed costs orders for non-compliance.

If we are to achieve the resolution of care cases in 26 weeks we must have a new style of management for family cases and that must be based on what works for the child: timetables that rely on evidence-based good practice. Our aim is to improve outcomes for children by providing them with the timely justice they need and deserve.

**LAUREN TURNER (PRESS ASSOCIATION):** When you were talking about delays, I just wondered if you could give us some detail about what time of timescale those delays were, and also whether you were finding those before 2008 or whether that was just something that led to a kind of a one-off increase?

**MR JUSTICE RYDER:** Delay has increased steadily from the implementation of the Children Act 1989, when it was anticipated that a care case could be completed in twelve weeks. That probably never

occurred, but you will see that delay has increased to the time when David Norgrove reported when it was at an average of 57 weeks -- in fact, over 60 weeks in the County Court. That was in the spring of 2011. I am pleased to say that the figures for the summer of this year show an average of 54 weeks, and the last quarter have shown a similar reduction again. Although they are only provisional figures, we appear to be down to 51 weeks. That is, in part, by the use of the additional 8,000 days over the last two years, and in part by implementing some of the reforms we are talking about today.

**MARTIN BENTHAM (EVENING STANDARD):** You raise the issue of experts' testimony and the fact that so much of it is of variable quality and a contributory factor to these delays. What type of experts' evidence are you talking about and where is it most likely that you are going to get this duplication of low-quality type testimony? Are there particular types of expert evidence where that occurs or is it across the field?

**MR JUSTICE RYDER:** The issue is rarely low-quality expert evidence. There is low-quality expert evidence and that is rooted out by the judges in making the decisions that they do. The problem tends to be repeating evidence because of a lack of confidence in that which is already before the court. I have referred to it as "multi-layered decision making". There are good reasons for experts. They fill gaps where gaps have been identified by the judge and the parties, usually on very narrow discrete issues, or more complex cases where you need to bring together the different disciplines within one

report. But simply as an excuse to confirm that which you already know, that is what has to stop, because that is time-consuming and it is very expensive. At the end of the day you are doing that at the expense of the child.

**MARTIN BENTHAM:** Sorry, what types of evidence are you talking about? Can you give us an example of the sort of thing you are talking about?

**MR JUSTICE RYDER:** It goes across the board. We generally see multi-layered evidence in the social work field and in the psychological field. We are rarely talking about medical evidence here, because medical causation cases are a small minority of very specialist cases where you are looking at constitutional problems or life-changing events. So it is primarily independent social workers or psychologists.

**FRANCES GIBB (THE TIMES):** Can I ask about people acting without lawyers? How much of a problem do you anticipate this is going to become, and how will it change the role of the judge? And in particular, do you plan to stop the right to cross-examine by these people?

**MR JUSTICE RYDER:** I think I have to start off with this proposition: all of these parents are already before the court. So this is not an increase in the number of cases or an increase in the number of litigants. They are there already and their problems are already

problems for us to solve. A significant number of parents in private law cases will not have public funding after April of next year, and we want to produce a new procedure that is fair to them -- that is, it assists them to present their case -- but also fair to the represented parties because there still will be represented parties. It has to be fair to everyone.

The other thing I think we need to remember is that it has long been an aspiration of professionals right the way across the family justice system to get as many cases out of court as possible. If you can provide effective dispute resolution without the conflict that court seems to engender, then that is generally beneficial to parents and therefore to children. That said, we have an obligation to provide access to justice for self-representing litigants, and we will provide a new procedure that accommodates that. I have suggested the sort of investigative or, if you prefer it, inquisitorial process that might come into play, so that it is the judge who is asking the question instead of one parent trying to ask questions of another. Our experience is they are not very good at it. That is not entirely surprising. Focusing on the question is not something that one does in the heat of emotion in a breakdown of your relationship. Equally, sometimes we have victims involved. One parent may be the victim of the control of the other. There are domestic violence cases, there are cases with significant emotional and safeguarding issues. One suggestion that we will pursue is allowing the judge, therefore, to ask the questions that need to be asked of the parties in that sort of case.

Private law cases are those cases that do not involve local authorities -- that is the State -- and so they are cases that are almost exclusively between parents about their children and where the parents, in the absence of public funding, do not have any assistance from lawyers, or anybody else within the State process. So the obligation will be on the judiciary to provide a system which works for them to be able to resolve those disputes.

Public law cases are, of course, those involving local authorities. They tend to be for care and supervision orders and where children are at risk of being removed, because that is the general purpose of the applications made.

**REETA CHAKRABARTI (BBC):** Mine is a public law question. What do you say to those who worry that too much emphasis on speed might result in bad decision-making? And are judges ready to be more assertive in their courts?

**MR JUSTICE RYDER:** The usual comment about the judiciary is that over time they get "judgitis". Assertive judges I do not think are the problem. Getting judges ready to look at what works and so to go behind decision making and look at outcomes for children, look at research, look at evidence-based good practice -- and not just in this jurisdiction -- is a challenge. It is one that we welcome. We are going to teach it both in the leadership training and in the good practice training that will follow over the next eighteen months.

Coming to your first point, if I may, effective case management, which is the identification of the issues in the case, and getting the evidence that is necessary for those issues to be decided, does not mean cutting corners. What it means is making decisions about what those issues are and what evidence you need at the beginning or as near the beginning of the case as possible -- it is, in conventional terms, front-loading. That is time well spent from the perspective of the child because if we have judges who have the time to look at the issues in the case, who are clear about what the timetable should be for the child, based upon the evidence in the case, and they keep the case, so it then does not go to a succession of other judges who have to make the same decision again, you are much more likely to have rigorous case-management which would not then be cutting corners, it would be sticking to the timetable for the child.

**REETA CHAKRABARTI:** But that requires the same sort of focus from social workers and all the other bits of the system.

**MR JUSTICE RYDER:** Absolutely right, and if there is one thing which this will need, it is the co-operation and participation of everyone. Professor Munro's reforms are directed to exactly the same end. What I need, and what the family judiciary need, are cases where social workers are, in their initial presentation of evidence to the court, setting out exactly what has happened on what their analysis of what has happened is, and the quality of that really does

determine the time-table that follows. If you are able to say: "The realistic options for this child are A or B" at the beginning of the case, instead of six months later, you can then plan properly for how that case is to be heard, and fairly to be heard.

**JACK DOYLE (DAILY MAIL):** Can I just ask quickly what the breakdown is in the cases that you hear of private and public in terms of that 30,000? Where is the division? How many of each are there? Have you got a sense of numbers?

**MR JUSTICE RYDER:** I cannot give you accurate figures. They are published regularly on a quarterly basis by the Ministry of Justice. In terms of the way in which they are dealt with by judges, it is primarily the District Bench in the County Court that deals with private law cases. Primarily the magistrates are the Circuit Bench who deal with public law cases. So, although each does a bit of both types of case, the impact of change will be different for the different judges and magistrates. It is not as if you are increasing somebody's workload and at the same time having to change the way they operate. Each different group of judges will have different changes that they will have to look to over the next two years.

**JACK DOYLE:** And can I just follow up on Martin's point on experts? What is the problem that you are trying to solve with experts? There are too many being introduced. Why is that? Why are there too many? Is it delaying tactics? What is the problem with experts that you are trying to fix? How would you characterise the problem now, and

how would you like it to be after your reforms?

**MR JUSTICE RYDER:** I have listened carefully to experts like Professor Munro on this topic, and indeed to some of the more significant research commentators -- the academic commentators. We all seem to agree that the primary problem is that social workers, experts themselves, and judges, all want to err on the side of compassion. You all do not want to make the most difficult decision until you are absolutely clear that that is the only decision that is left for you, and that means that if you simply think of fairness in terms of the impact on the parent, yes, you are going to listen perhaps too carefully to more and more opportunities for experts to be introduced into cases, to see whether the parent has the prospect to change, to see whether there are other relatives who have not come forward who should have done -- all of those are good, theoretical questions. But every time you do that, you have an impact on the child who is the subject of the proceedings, and what I am seeking to emphasise is that every time you are asked to get an expert involved, or to delay a case to get another expert involved, you must look at the impact on the child concerned, because that delay is that child's time, and we are going to require CAFCASS in future to give a short analysis every time an adjournment is asked for, every time delay is suggested, every time an expert is suggested, just to show what impact that will have on the welfare of the child, because you are not making a decision every time you delay, and usually there is evidence about the material that you are considering that already exists and if it can be put together properly and analysed before the

court.

**JOHN BINGHAM (DAILY TELEGRAPH):** Just going back to the litigants in person, you have said that the courts will have to deal with a volume of previously represented parents. Is there any sense of what that volume is? And linked to that, would I be right in drawing out of this that there is a fear that this change could actually set back some of your best efforts in reducing delays by introducing a whole new source of problems in the family courts?

**MR JUSTICE RYDER:** I start from the proposition that public funding will remain unchanged for public law cases -- that is the care and supervision order cases. Parents will still be entitled to non-means, non-merits tested legal aid. There is no known government proposal to alter that split. So we are dealing here only with the private law cases. I think the significance of what is going to happen here is the fact that they will appear at the court door without legal advice, and so the changing practice that I am envisaging is the judge having to find out what the dispute is between the parties, and then focus on how to resolve that and where to get the evidence from.

You ask me how many more people there may be. There is no reliable estimate. There is no government estimate that I am aware of. If you look at the impact statement to the Bill when it was going through Parliament, there is no conclusion there. The Law Society has commissioned research on the point from Graham Cookson and he

suggests figures but, as he has made very clear, they are no more or less reliable than any management economic forecast, and so we really are going to have to wait to find out how successful mediation will be. If mediation is successful, then of course the workload of the court could reduce. If it is only as successful as it is at the moment, then the workload will increase and that is because most self-representing litigants -- not all -- take more time for their cases to be dealt with in court. Some actually take a lot less, because if you ask the right questions and answer the problem that they have given you, they are out of the door rather more quickly without lawyers than they might be with lawyers. So there are two sides to this argument. It is not entirely pessimistic.

You are, of course, right, that if we do not get the private law reform sorted -- if we do not have a proposal that we implement which works, then that does have the potential to damage the public law reforms that we want to bring in. But because of the different judiciary who deal with the volumes of this work, we are able to bring these things in in tandem, and we will.

**MARTIN BENTHAM:** Could I ask another question? Probably superficially people think of a lot of these cases as involving parents of the Baby P type character who are ill-educated, from impoverished backgrounds and so on. The private law case is not at all what you see. How much in your experience do you see parents resorting to law to fight custody battles and so on that are damaging their children? And how much of that is, do you think, something

where those people should actually think better of it -- try to mediate first? And how much damage is being done to their children from people who perhaps actually are educated enough and so on who should know better? I know that it is a sort of general non-legal point in a sense, but you have experienced this.

**MR JUSTICE RYDER:** Private law cases cut across all strata of society, all types of parenting, and there is nobody -- no family I can think of is excluded from their need at some stage to come to a court where they simply cannot agree by any other route. The Family Justice Review built on what I referred to earlier, which is an aspiration that many family justice professionals have had to try to resolve these disputes out of court wherever possible. If one can provide services, advice, parenting programmes -- the government has a whole raft of both proposals and plans already in place. If one can by that route resolve disputes and plan between parents for their child, then of course that is better than having what they must experience as an adversarial dispute in court, no matter how much we try and make it an inquiry with the aim of finding out what is in the best interests of the child.

Yes, therefore, there is a good public policy in trying to keep as many families out of the court arena, provided that you have a system which is able to resolve their disputes. Now, mediation is a well tried and tested system around the world. One looks at Australia and New Zealand. They brought it within the court system. It has cost them so much money that they are now having to re-configure what they

are doing, and we are not responsible for mediation in this jurisdiction. That is a separate service which is provided by the State through accredited mediators. All that I have to do -- and it is a big ask -- is to find a way in which those who do not succeed in mediation can still have access to justice in the courts.

**MARTIN BENTHAM:** But how much of that is just down simply to the parents themselves not taking a deep breath -- how much of it therefore is them in a sense putting their own vindictiveness or animosity towards their ex-partner before the interests of their child, and causing damage which you will see in the courts on a day-to-day basis?

**THE LORD CHIEF JUSTICE:** Is that a question that even Mr Justice Ryder can possibly answer?

**MARTIN BENTHAM:** You can answer it if you want.

**THE LORD CHIEF JUSTICE:** We are talking about people, are we not? We are talking about people with problems. Sometimes it is resolved, sometimes it is not. Sometimes it generates the most dreadful consequences in terms of bitterness to them and, ultimately, disruptive for the children. Sometimes they find a solution that is agreeable to both of them and to the extended families on each side and, to the extent that it is possible, leaves the children undamaged. I really do not think that Mr Justice Ryder can answer that question because I do not think there is an answer. It is folk.

**MARTIN BENTHAM:** Yes, obviously it is, yes. We are all folk, aren't we?

**THE LORD CHIEF JUSTICE:** We are. Exactly.

**MARTIN BENTHAM:** Can I ask one other question? On the litigants in person, is this an area, Lord Chief Justice, where actually the law itself is too complex and should be simplified?

**THE LORD CHIEF JUSTICE:** I do not think the law is complex. The decision that has to be made in all these cases is very simple to state: what are the interests of the child or the children? That is paramount. Much more difficult is to resolve what that is, but the law is not complicated.

**MARTIN BENTHAM:** It is just a question of people like us who go in there and if we were representing ourselves would make a mess of it just because everything was so complicated, rather than being able to ....

**THE LORD CHIEF JUSTICE:** I would suggest that if Mr Bentham turned up in court and said, "The paramount interests of my child are these for these reasons", you would be perfectly well able to explain why you say they are. But you would not need to go through the case of Bloggs and Snooks and Smith, and the House of Lords said this -- none of that.

**NICK HOLBORNE (SOLICITORS JOURNAL):** I was just thinking again about that same question of cross-examination, just wondering if you could give us an idea of what options you are considering? Couldn't you just leave that to the judge?

**MR JUSTICE RYDER:** I think we are likely to leave it in the individual case to the judge. Most judges already have a volume of self-representing litigants -- it is not as if it is a new experience. At every level of court at the moment we have volumes of self-representing litigants and we all adapt the procedure we use to the people we have in front of us. In fact, it is the answer to the previous question as well. You have to be adept to realise whether you are dealing with someone who cannot put their views forcefully across, or somebody who may be vulnerable, may have special needs, and equally somebody who may be more adept at controlling by the way they want to put their case in the presence of their former partner. We already control that very, very carefully. We control how questions are asked and what questions are asked. What I am suggesting is that we will need to do that far more often and that judges will need to have some guidance, not least because there remain a group of people who think that every time a judge asks a question, they are favouring their former partner; every time a judge intervenes, it is antagonistic to them. When you have lawyers, there is an objective barrier between you and the emotions that are there in front of you in court, and we need to provide that objective barrier by some guidance, because you will always get a group of

litigants who claim that there is bias, who claim that there is favouritism being shown to their former partner. If everybody is aware of the processes, yes, you can leave it to the judge, but there is also an expectation, and that expectation may be very important to litigants in person -- self-representing litigants -- who frankly do not have any prior knowledge of what the court does and how it does it.

I suppose that leads to one other part of this. Those involved in assisting self-representing litigants have produced, and are continuing to produce, a huge volume of materials that will be of great assistance. The system has almost gone into overdrive, I am pleased to say -- those who have written books to help, and those who have written practice notes -- they have all offered their assistance to try to make sure that the self-representing litigant coming into the court arena for the first time has something that they can watch, listen to, read, which will actually explain a process that they may never have contemplated before in their lives.

**MAYA WOLFE-ROBINSON (GUARDIAN):** Two questions. First, why isn't the High Court involved? And secondly, if someone is giving more control and more power to judges and asking them to do a lot more and asking them to become case managers, how much training is that going to necessitate for judges, and how are you going to make sure that they are up to the job?

**MR JUSTICE RYDER:** If I deal with powers and duties first and the

High Court -- first of all, the High Court is involved. Every single High Court Judge assigned to the Family Division will regularly sit in the Family Court, and that is a critical part of the recommendations that I am making. They always have sat on the full range of family cases, but the reality is, as I have described it, because of unintended consequences -- which is significant rises in workload of other types of case -- their impact on children cases, particularly public law care cases -- has receded over the last three to four years, and that means there is not much guidance for those working in this field in the High Court. Traditionally, lawyers get their guidance from decided cases. So we seek to re-engineer that, to put the High Court back into the centre of the Family Court, and also to preserve unique jurisdiction -- supervisory and inherent jurisdictions that are only for High Court Judges to exercise, and so they will be judges of both courts. So from the High Court's perspective, it will be rather more like the Crown Court. They will go around the country; they will be seen; they will have a profile; and they will sit in the Family Court as well as in the High Court here in London and no doubt on circuit.

Their powers and duties will actually be no different. It is the way in which you exercise them that has been the key to looking at the reforms that we are proposing. Active case management, taking a role and deciding what the judge thinks is right in the case does involve a change of mind-set. We describe it as a change of culture because it involves everybody. It involves those giving evidence and it involves those preparing the evidence, those advising the lawyers and

the judges, and that will involve training for everybody and consistent training across the board. You will see that I have recommended that that training use the same materials, so we do actually get consistent training of social workers, lawyers, and judges.

For our part, there are two very significant new training programmes that will be put in place. One, at the end of this year in December, will deal with all the leadership judges -- they are designated Family Judges in the 43 areas of England and Wales; and also the High Court Judges -- there are seven of those -- the Family Division Liaison Judges. So they will come together for that training exercise in December. And then there are 600 judges who have public law authorisation, who will be trained at residential courses in April and June of next year, and that is in addition to the training they would ordinarily have received over a three year cyclical period from the judicial college.

**THE LORD CHIEF JUSTICE:** I do not think we should worry too much about this issue. We have, after all, changed the whole system in the Crown Court so that judges actively manage their cases. A year or two ago I spent some time suggesting that judges are -- if you can imagine it -- rather like a football referee. In the old days the referee would wait in the middle of the pitch. The teams would come out when they were ready. He would blow the whistle and off the game would go. And at the end of the game he would blow the whistle again. When we were dealing with it in the Crown Court I said I

expected the referee to be the modern referee who would go into each changing room before the match; he would point out to the chap who was always offside that he was always offside and he had an eye on him; he would point out to the constant fouler that he had his eye on him and that he expected the game to be reasonably clean; then go to the other changing rooms and say the same things; and then when he was ready he would take the teams out onto the pitch and he would place the ball between them. The rules of becoming more closely involved in the management of the case is simply a matter of thought and time, and in the Crown Court now judges are constantly assuming this role; including hearings beforehand in which the judge simply goes through the list of things that have to be done, checks why they have not been done, and so on and so forth. So what we are actually envisaging here is something that has already been tried and tested in the criminal justice system and is working in it. It will take time, of course it will. People will need to rethink the way they have been doing their work, but it is not actually, in my view, a major problem.

**JOHN BINGHAM:** Just a quick one. When you talk about "fixed cost penalties" for people who hold things up, can you just spell out what that means and who that will affect, and how that is different to what goes on at the moment?

**MR JUSTICE RYDER:** We do not have any costs compliance regime at the moment. The judge has power to award costs in family cases as he or she would have in civil cases, but as you will see from the most

recent decision of the Supreme Court this week in the case of Re F, costs are not the norm. There has to be reprehensible conduct in the way in which the proceedings are conducted for costs orders to be made against parties in family cases. What that does not address is that if you have clear case management directions, they are often agreed case management directions, and then a party simply fails to comply with them and does not tell anybody else. Then you get to the hearing and the hearing is wasted -- and the hearing could be set up for one to three days. Everybody goes away. The next hearing that may be available may be weeks or months hence. That is not acceptable with respect to the child. So what we are suggesting -- and it would require at least a statutory instrument; it will require some legislative change -- is that a fixed costs regime be considered so that if you have non-compliance without excuse, without notification, then the court can say, "That is not acceptable in respect of this child and you pay the costs thrown away". It still of course will have caused the delay, but it might actually have the effect that some sanctions will cause change of practice.

**JOHN BINGHAM:** Does that mean, for example -- you would probably have CAFCASS having to pay out?

**MR JUSTICE RYDER:** You have to remember that CAFCASS are not a party. They provide the guardians and the reporters, rather than being a party themselves, but there would certainly be the prospect, if the regulations were correctly drawn, of family justice agencies having to pay fixed costs if the government were to accept our

recommendation.

**MARTIN BENTHAM:** What about the parents themselves in cases?

**MR JUSTICE RYDER:** You are back then to the Supreme Court Rule on costs. It is rare that a parent actually has caused a delay. They do not always go and see their solicitors. They do not always provide instructions in a timely manner. Parents have all sorts of challenges they need to face in these cases, but that is rarely the reason why delay is caused. So I do not envisage that as being anything other than the most rare example.

**CATHERINE BAKSI (LAW SOCIETY GAZETTE):** So if it is not really CAFCASS who is going to get the costs, or the parents, the other parties and solicitors, are you saying that (inaudible) at risk?

**MR JUSTICE RYDER:** Well, I did not say that it was not CAFCASS. I said that would depend upon how the regulations were drafted, but it would, of course, also include local authorities. The two main institutional parties in the case are the children's guardians and the local authorities, and they are the ones who are most at risk of this sort of regime if the government accepts that it should be brought up. Of course, solicitors are already susceptible to wasted costs orders if they have put themselves within the case law relating to that. It may well be that a fixed costs regime is a simple way of achieving that objective, but again it is a rarity that lawyers themselves are responsible for the delay by non-compliance. They

generally self-report, and they have good reason to report themselves. They do not want to be criticised personally by a judge.

**JACK DOYLE:** I have a numbers question. You have given a sense of the average length of time. What are the cases -- give us a sense of the cases where the longest delays are occurring. What sort of length of time are we seeing which in particular you would like to reign in? Is it several years, is it eighteen months -- in care cases, I suppose, rather than the private law.

**MR JUSTICE RYDER:** You can see that from government statistics. There are cases that are over 80 weeks. They are a very small proportion.

**JACK DOYLE:** How many of them are there?

**MR JUSTICE RYDER:** I am not going to speculate precisely how many there are because they are not counted by case, they are counted by children. So examining what is behind the statistic is something that you would have to be very careful about.

**JACK DOYLE:** Sure.

**MR JUSTICE RYDER:** But you have to bear in mind that actually those are the cases that necessarily attract the greatest criticism. They are often cases involving teenagers who have a real interest in having their voice heard about where they are to live for the rest of

their lives, and I just want everybody to be a little careful in saying we must eradicate all cases that take a long time. Some of them take a long time for very good reason, and we must judicially except them from any plan to try and get the rest of the cases dealt with in a shorter period of time.

**REETA CHAKRABARTI:** If there is a rise in the number of litigants in person and they take a longer time and they clog up the system, could that have a knock-on effect on public cases?

**MR JUSTICE RYDER:** Again, because the district judges in the County Court -- and the district judges of the new Family Court do most of the private law work, but do not do most of the care cases (the public law work), it is unlikely that a knock-on effect in terms of volume and waiting times will be significant. There is the possibility of a knock-on effect because district judges now do care cases and have been brought into this jurisdiction progressively over the last five or more years. My expectation is that if we get our private law pathway right, and we allocate private law cases also to the magistrates in far greater volumes than we do at the moment -- and they are more than willing to have these cases and indeed have been campaigning some while to broaden the jurisdiction they exercise -- then we will be able to manage the overall workload problem. Actually that is one key reason for having judges who manage the workload. They actually need to know who has got what and where it is in the system, and for the first time we have introduced a management system which allows them to do that. It is actually a

recording system that tells you where everything is and how long it has been there.

**REETA CHAKRABARTI:** But it is a bit of an unknown from what you are saying?

**MR JUSTICE RYDER:** It has been, but from 1 April 2012 the judiciary with HMCTS have actually taken steps to make sure we are not in that position any longer. I think it is one of the recommendations that David Norgrove probably did not expect us to achieve in quite such a short period of time. We have done and we will be able to do something with the case load that we have got.

**REETA CHAKRABARTI:** I meant more the litigants in person. You do not quite know what is going to happen?

**MR JUSTICE RYDER:** Nobody I know of knows the answer to that question.

**STEPHEN WARD:** Thank you very much.

**THE LORD CHIEF JUSTICE:** Thank you all very much for coming.

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