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CHANGING THE CULTURE

THE ROLE OF THE BAR AND BENCH IN THE MANAGEMENT OF CASES INVOLVING CHILDREN

THE LAW REFORM COMMITTEE OF THE BAR COUNCIL

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CHECK AGAINST DELIVERY

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1. I am both flattered and dismayed at being asked to give this paper. Flattered, of course, at being asked at all. Dismayed by the distinction and erudition of my predecessors. What can a jobbing hack such as myself offer in the face of such erudition? I was at the Bar for 24 years. I was a judge of the Family Division for 11, and in the Court of Appeal for 6. My practice was almost exclusively in family work, and the only escape I had as a judge of the Division was to the Employment Appeal Tribunal and, latterly, to the Administrative Court. Now I divide my time between sitting at first instance and in the Court of Appeal.

2. It is, principally because I am, first and foremost, a practitioner, that I am not going to talk to you about law reform, but changing the culture. I have read the lectures given by those two distinguished family lawyers Baroness Butler-Sloss and Baroness Hale of Richmond. The latter discussed the role of the judiciary, the Law Commission and Parliament in reforming the law. It is not a subject into

which I wish, or feel competent, to venture. I recall clearly being welcomed onto the bench and, following Francis Bacon's Essay on Judicature, announcing proudly that I saw the judicial role as "jus dicere" not "jus facere": I recall equally clearly my first case, in which I sought to re-write the law of maintenance as it applied to adult children seeking relief from their deceased parents' estates, only to be told firmly by the Court of Appeal that this was none of my business[1]. My theme, therefore this evening is not law reform, but practice and culture, both as they affect the judiciary and the professions. Most of this paper will be about the judiciary, and it is the judiciary with whom I will start.

3. Historically, the English (or Welsh) judge has been the umpire or arbiter. He or she (usually he) has stood aloof from the process. The advocates prepared and presented their cases, and judges only intervened in that process if invited to do so, to resolve a point which the advocates disputed. The judge then decided the issue and went away. Enforcement of any order was the function of others. The process as described was seen as part of the guarantee of judicial independence. The judge did not descend into the ring, but remained above it.

4. In Family Law, as well as in other jurisdictions, this model is no longer practicable or acceptable. For present purposes, I propose only to go back to the Children Act 1989, in relation to which I share the common view that it represents "the most comprehensive and far reaching reform of child law" and that it remains "the overarching legal framework for family law as it applies to children"[2].

[1] ***Re Jennings (decd)*** [1994] Ch. 286.
[2] The ***Family Justice Review"*** Final Report, November 2011 paragraph 2.3.

5. The Act, of course, expresses two principles of particular importance to the theme of my paper this evening. The first is expressed in section 1(1) of the Act, that when a court determines any question with respect to the upbringing of a child his or her welfare "shall be the court's paramount consideration". Paramount, of course, means more important than anything else, notably – in the context of proceedings relating to children – the Article 6 and 8 rights of their parents and (usually) – the Article 10 rights of the public in general and the media in particular(?).

6. The second principle immediately follows section 1(1). Section 1(2) reads that in any proceedings in which any question with respect to the upbringing of a child arises, "the court shall have regard to the general principle that any delay in determining the question is likely to prejudice the welfare of the child." The problem of delay is a principal theme underlying my paper this evening.

7. The Act does not, however, limit itself to statements of principle. In both public law cases (that is to say cases between the State and a child's parents usually in the form of the local authority seeking a care order) and private law cases (those usually between parents or relatives and not involving the State), the court is enjoined to deal with the case expeditiously.

8. For present purpose, I will recite section 32 of the Act, which appears in Part IV under the heading Care and Supervision. There are, however, similar considerations in section 11 in Part II dealing with private law disputes. The relevant part of section 32 reads as follows: -

"Period within which application for order under this Part must be disposed

(1) A court hearing an application for an order under this Part shall (in the light of any rules made by virtue of sub-section (2))

(a) draw up a timetable with a view to disposing of the application without delay; and

(b) give such direction as it consider appropriate for the purpose of ensuring, so far as is reasonably practicable, that the timetable is adhered to.

(2) Rules of court may

(a) specify periods during which specified steps must be taken in relation to such proceedings; and

(b) make other provision with respect of such proceedings for the purpose of ensuring, so far as reasonably practicable, that they are disposed of without delay."

9. In the interests of time, I propose to move directly to the Practice Direction which governs case management i.e. the Public Law Outline in its current form, and to the issue of delay raised by the Family Justice Review in its recent Final Report. Before doing so, however, I need to make one or two preliminary points. Thus I begin by stating that the evidential rules for family justice have, as I see them, been grafted on to the adversarial common law approach.

10. It has long been my view that adversarial proceedings are often not the best way to resolve family disputes. Too often parents use their children as the battleground (and sometimes the ammunition) to re-fight the rights and wrongs of the relationship. Children are often very damaged by this process.[1]

[1] I recall one case of mine, **Re R (Residence) [2009] EWCA (Civ) 358. {2009 1 FLR 819 at para 124, in which I cited** a poem by Philip Larkin, being re-named by the bar, which had not entirely lost its sense of humour ***Re F***

11. Although family proceedings are said to be “inquisitorial” or “quasi-inquisitorial” (and the best are), family justice is part of the overall system of justice. The English rules of evidence simply do not permit the court to be wholly or truly inquisitorial. The judge remains the judge, not the investigator.

12. At the same time, it is immediately apparent that sections 11 and 32 of the Act are a long way from the “hands off” arbitral system which I have identified as the historical norm. European colleagues at judicial conferences find it astonishing that we do not talk to children, let alone that we do not come off the bench to visit families in their homes. They regard us as depriving ourselves of the most useful and direct evidence in relation to children and families, and listen with barely concealed surprise when we say that such things are simply not possible for an English judge.

13. At the same time, the move towards the inquisitorial system, certainly in case preparation, is not limited to family justice. The CPR were a major step in this direction and the judge who sits in crime is a robust case manager in terms of ensuring that a case is prepared properly for trial.

14. Absent a dramatic change in the law, however - in effect the adoption of the civil law system - the English judge will remain the arbiter, the decider. But sections 11 and 32 of the Act make it plain, in my view, that the family judge is, or must become, a case manager. He or she must take the initiative: judges (and magistrates) must decide what they want and must give directions to ensure that it is obtained. That is, I will suggest, one of the solutions to the problem of delay and one of the principles underlying the theme of this paper.

15. Hand in hand with case management goes judicial continuity. Everyone agrees that it is a waste of valuable resources for a series of judges to read the same set of papers in order to make what are sometimes conflicting decisions in the same case. From the perspective of the litigant, the consequence is unsatisfactory and sometimes bewildering. Part of the success of the Family Drugs and Alcohol Court (FDAC) at Wells Street is the fact that the litigant has to return at regular intervals to meet the same judge and to report on progress. So judicial continuity will be a second, important solution to the problem of delay.

The Public Law Outline

16. This represents the greatest judicial effort so far to address the problem of delay. You will find it in its latest manifestation, in the specialist family reports[2]. It is an extremely detailed document, but its structure is straightforward. There are, essentially four stages to every care case set out at under the heading 'Case Management Tools'. They are (1) the first appointment; (2) the case management conference (the CMC); (3) the issues resolution hearing (the IRH) and (4) the final hearing. The PLO introduced both a problem solving approach to decisions about children and a framework in which that is to be done. There are 4 principles: (1) procedural fairness by local authorities to be achieved by early pre-proceedings preparation and disclosure, (2) a timetable for the child, (3) key issue identification by the court, and (4) key issue resolution by the court.

17. The overriding objective as it applies in Family Law is set out at paragraph 2.1. By paragraph 2.3 the parties are required to help the court further the overriding objective. The PLO boldly goes on to state the main principles of court case management. They include: -

[2] ***Practice Direction: Public Law Proceedings Guide to Case Management*** [2010] 2 FLR 472.

a. A timetable for the proceedings set in accordance with the timetable for the child;
b. Judicial continuity whereby the same judge where possible conducts each step of the case and in any event must be responsible for case management;
c. Active case management to further the overriding objective;

See paragraph 3.1 [2010] 2 FLR at 473.

18. The "timetable for the child" is then explained in detail in paragraphs 3.2 to 3.11. Its definition is also contained in rule 12.23 of the Family Procedure Rules 2010 (the FPR). It means the time-table set by the court in accordance with its duties under sections 1 and 32 of the Children Act 1989 and will take into account dates of the significant steps in the life of the child who is the subject of the proceedings and must be appropriate for that child i.e. in accordance with his or her welfare. The timetable should answer the questions "when should the child be permanently placed" and, if different, "when should the proceedings be completed".

19. Active case management includes, among other things, control by the court of the issues to be determined, party status, the use of experts, evidence and the use and disclosure of documents.

20. I am not going to read you the whole of the PLO, but you can take it from me that it is all there. The Guidance is clear and detailed. So why, if we have the PLO, do we have the Final Report of the Family Justice Review (the FJR) criticising the delays in care proceedings, and telling us that "significant change is necessary"?[3]

[3] Family Justice Review, Final Report, November 2011 paragraph 3.55

Perhaps the answer lies in the remainder of paragraph 3.55 and the opening of 3.56 of the review's final report: -

> There are varying practices in courts across the country as seen in recent research[4]. This is also reflected in differing case lengths..... [ranging in average from 38 to 78 weeks] – a difference of over 9 months. In the same period the average in Family Proceedings Courts ranged from 28 weeks to 63 weeks – nearly 8 months.....
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> 3.56 Recent research [the same] found that the introduction of the PLO has had little impact on the way in which cases are managed. Indeed, in three of the four areas studied there was little evidence that the court followed it. Negotiations between lawyers had a greater role than judicial case management in shaping the progress of cases, within a shared ethos - among lawyers for all the parties, legal advisers and judges – that care proceedings involve such draconian decisions that parents should have an absolute right to contest them, regardless of the needs of the child.....

21. These, and similar thoughts, led the FJR to recommend that the time limit for the completion of care proceedings should be set at six months; that whilst the PLO provided a "solid basis for child focused case management" inconsistency in its application was not acceptable. The senior judiciary was encouraged to insist that all courts follow it and that it "will need to be remodelled" to accommodate the implementation of time limits in cases.

22. I could easily spend the rest of this lecture discussing the multi-factorial reasons for the delays in care proceedings, the recommendations of the FJR, the research to which the FJR refers and the importance in children's lives of the decisions made every day to separate them from the birth families. I do not propose to do so. As I stated at the beginning, I am a practitioner. The question which I must address, therefore, is what we are going to do about it. It is not a question of changing the law. The law is there – in the PLO and in guidance which

[4] Pearse, J and Masson, J with Bader, K (2011)

I and others have proffered and will continue to proffer[5]. It is, as the FJR itself recognises, a question of changing the culture.

23. One of the solutions recommended by the FJR is the creation of what it calls a Family Justice Service which would be responsible for delivering court social work services, mediation, other out of court resolution services and experts. For the reasons which follow, which include important questions of constitutional significance and economic feasibility in the present climate, I do not think that such a service is practical – at least in the short term, nor is it necessary. So what is to be done?

24. Let me start at the beginning. I do believe that the FJR offers both us and the Government an opportunity to reform the Family Justice System which is unlikely to be repeated – certainly in my professional life-time and, I anticipate, in the profession life times of many of us. It is, accordingly, an opportunity to be seized. Reform and change are necessary. The cultural change necessary for the judiciary is immense, and not to be under-estimated.

25. At the same time, the role of the judiciary is critical to the success of the Family Justice System. For example, my view remains (and the FJR recognises) that for as long as the State empowers the removal of children from their birth families into care and adoption, the decision to effect that removal has to be taken - on all the available evidence - by a disinterested third party who has no personal engagement in the process save that of ensuring that it is fairly and efficiently carried out. Such decisions, which are often very difficult and far-reaching depend

[5] See, for example, several decisions of the Court of Appeal and my Guidance (inter alia) on split hearings and appeals on case management decisions.

upon an objective evaluation of all the evidence in each case and cannot be taken by anyone with an interest in the result – for example, by local authorities. These decisions have to be taken by judges and magistrates.

26. The final report of the FJR has adhered to its proposition that a Family Justice Service should be created. As I say, we await the government's response. But even with the FJR's adherence to its recommendation of a new Family Justice Service I suspect that the government, keen above all not to spend money, may not implement the recommendation – at least in any way other than the purely interim. We should also, in my view be wary of creating additional discussion forums in family justice. There have in the past been too many to count, not all of which have added any value despite the cost of their creation and operation. The exception which proves the rule is the Family Justice Council. That body provides quality, independent inter-disciplinary advice and is a critical friend of the system. Its continued existence should not be compromised.

27. It is partly for these reasons that I have decided to take steps in advance of the Government response and why I prefer the proposal approved by the Judicial Executive Board and favoured, inter alios, by Ryder J (whom I have appointed to be judge in charge of Judicial Modernisation) namely the creation of a *Family Business Authority* (FBA*)*. What follows is an outline.

28. The background, as well as where we are, both need to be taken into account. Since 1 April 2011, when HMCS and the Tribunal Service were merged, the courts have been administered by HMCTS. Whilst an agency of the Ministry of Justice (MoJ), HMCTS is a partnership between the Lord Chancellor, the Lord Chief Justice and the Senior President of Tribunals. It has an independent Board whose objectives are to deliver the aims of the Lord Chancellor and the Lord Chief

Justice. The relationship between the Lord Chancellor and the Lord Chief Justice is set out in a Framework Agreement which seeks carefully to balance the independence of the judiciary with appropriate control by the Executive of resources, as well as accountability to Parliament for the use of those resources. The FBA is the operational decision making part of the HMCTS Board for family justice issues and its terms of reference and makeup reflect the constitutional guarantee that the Framework Agreement provides for judicial independence.

29. I acknowledge that judicial independence is something of a war horse which is often wheeled out inappropriately. But here it is a matter of very significant constitutional importance. As one example of the embodiment of judicial independence, the listing of cases has always been a judicial function. On a day to day basis it is more often than not carried out by HMCTS on behalf of the judge. No outside service can decide when cases should be listed. I shall come back to this point.

30. I am persuaded that setting up a Family Justice Service as what would amount to a new independent bureaucracy outside HMCTS, whether to bring coherence to the family justice system or negotiate funding with HMCTS, would not be cost-effective nor would it benefit family justice (or the administration of justice in general) in the long term. Whilst I accept that there should be significant structural improvement, I take the view that the fundamental problems are cultural, and that they will only be solved by cultural change. This, of course, is the theme of this paper.

31. I should, I think, make it clear that I regard family justice as essentially local. That is not to say that there should not be national norms and criteria. Of course there must be. But family justice is delivered locally. In care proceedings, the

critical person is the Designated Family Judge (the DFJ) - the circuit or sometimes senior circuit judge who is responsible for the operation of all of the judges undertaking family work in his or her care centre and family hearing centres. I do not want anything to be done Nationally that weakens the DFJ's role or that inhibits the ability of the DFJ as a judge to lead the inter-disciplinary working arrangements that make local family justice work. We are taking steps to create a job description for the DFJs designed to strengthen their authority.

32. In my view, the important changes rightly identified by the FJR can take place sooner and with less cost within the newly created HMCTS. This would – in due course and after, no doubt, appropriate consultation and necessary statutory change - involve CAFCASS (the Children and Families Court Advice and Support Service) as the provider of social work advice and services to the court moving from the Department for Education (the DfE) to HMCTS (not to MoJ as the Review suggests).

33. The proposal which I have favoured – and which we have begun to implement - is that the *Family Business Authority* (*FBA*) takes responsibility for the implementation of a plan to modernise family justice. The FBA has been set up, it is the counterpart of the Civil Business Authority and the Magistrates Business Authority which already exist. The *FBA* will like its counterparts, operate within HMCTS and the existing Framework Agreement between the Lord Chancellor and the Lord Chief Justice. It will, among other things, oversee the operational functions listed in the FJR and take as its broad strategic objective a number of policy aims. I do not, at this stage, think it is necessary to go into any greater detail, although work streams and methodology have already been agreed and are being urgently pursued.

34. The FBA will be chaired by the most senior HMCTS director with responsibility for family justice (who is a member of the HMCTS Board), with members from the judiciary and HMCTS: it will have in place the mechanisms to deliver the changes sought and – for the purposes of this paper its most important function - will help me lead a cultural change by judges regarding case management. It will also play a full role within HMCTS in deciding the family budget and could commission support services for the family courts. Equally, it might over time be possible to bring mediation services, expert advice services and the representation for children within an enhanced HMCTS.

35. In addition, it can co-ordinate interdisciplinary induction training (taking its lead of course from the Judicial College) and consideration of reviewing processes across agencies and plan and oversee implementation of major changes and initiatives. My view, accordingly, is that such a model would be consistent with the leadership, management and co-ordination of civil justice (and, to the extent that they are assisted by their Magistrates' Business Authority, the business of the magistrates). It would ensure that the family jurisdiction continues to be considered within the wider judicial context and that the use of resources is maximised. The *FBA* has been set up at virtually no cost. It will begin immediately to introduce some of the changes envisaged by the FJR.

36. In short, I believe this approach builds upon what is presently happening within HMCTS and amounts to a more realistic and cheaper means of achieving the objectives set by the Review. I suspect that David Norgrove and his team have not fully appreciated the re- organisation there has been within HMCTS and it remains my view that it is not currently practical to create a fresh organisation outside.

A specialist judiciary, listing and case management

37. So how does all this assist the change of culture which I believe to be necessary? Firstly, it requires a degree of specialisation. I am in no doubt that hearing family cases and cases involving children requires a special skill, and that this skill is at its most effective when regularly used. I am very clear that the days of the judge who only dabbles in the work are over. Judicial continuity and proper case management are simply impossible for the circuit judge who, for example, only sits to hear family case for a few weeks a year.

38. Like the FJR, I am therefore clear that we need a judiciary – and by this I mean the circuit and district judiciary - which spends a great deal of its time hearing family cases. I am, however, doubtful about any judge or magistrate having an unvarying diet of family work unless that is the judge's personal choice. I base this on my own experience. I personally spent eleven years as a judge of the Family Division, during nine of which I heard almost nothing but difficult care cases. I recall feeling distinctly jaded as a result. At least the judge of the Division has some variety - there is the Administrative Court, there is the variety of work within the High Court including the Court of Protection, matrimonial money and international work, there is the Court of Appeal and there are sittings on circuit – for me there was also the Employment Appeal Tribunal.

39. There are those who thrive on an undiluted diet of child care cases - as there are those who do nothing but crime - and for them I am duly grateful. My personal view, however, is that for the circuit and district benches, a mixed diet of family with crime and/or civil is the best way of keeping sane, particularly with the enormous pressure of work under which the bench has to operate. This whole

problem, in my view, is about the sensible division of limited resources between family, crime and civil in the work of the circuit and district bench.

40. The corollary to this is that the circuit and district bench – if they are to hear contested care applications - must exercise a greater degree of control over listing. Six months in crime will not work if it means that urgent child cases have to be adjourned for that period or go to another judge. A judge must be able to insist that a child case is listed when he or she wants. This will mean delicate but purposeful discussions with listing officers and colleagues. It will mean changes to itineraries. This, I recognise is another aspect of the change of culture that is necessary[6].

41. To sum up on this point, therefore, listing, in my view, is not only a judicial function: it must be more flexible. My experience from visiting county courts up and down the county is positive in this respect. Listing officers welcome judicial involvement and are prepared to be flexible if the judge is. There needs to be a co-operative pattern of negotiation.

42. Like the FJR, therefore, I favour a more specialist bench (both professional and lay) because such a bench is, on the whole, more efficient and generates greater confidence in the professions and in litigants. The judges of the Division need to maintain their level of expertise. The circuit and district judges need, in my view, to spend at least 40% of their time in family work and need to have the flexibility to list to meet the needs of the case. The lay justices need to do as much sitting as they can.

[6] **Equally, as it seems to me, the same principles of judicial continuity and flexibility of listing must apply in the FPC. The FJs needs an enthusiastic and engaged magistracy. I acknowledge the difficulties here also. Justices are volunteers. It is also difficult for any justice who is in paid employment to take a substantial amount of consecutive days off in order to hear a contested are case which may last two or three days.**

Allocation

43. In my judgment, this is also key. Like the FJR, I am in favour of allocation being done in the new family court either by the district judge or a mixture of DJs, legal advisers and, if he or she wishes, the DFJ. My reasoning is, I hope, reasonably simple.

44. Family cases are, by their nature, "dynamic". One of the principal sources of delay in my experience, is the case that has to be transferred from the FPC after some weeks because it has become a county court case or similarly to the High Court thereafter.

45. In addition, it seems to me that allocation by an experienced gatekeeping team of case managers with knowledge of local circumstances and resources is likely to be more effective. The legal adviser brings a dedicated case management skill and knowledge of availabilities to help ensure that allocation to the most appropriate tribunal including the magistrates occurs at the earliest stage of the proceedings. The same legal adviser will have power to assist all of the judiciary of the new court not just the magistrates. The need for re-allocation and the eradication of transfers will go some way to minimise delay.

46. I have not detected any potential tension between district benches (magistrates or county court) and legal advisors over allocation: far from it, local pilots of gatekeeping teams have been very successful. Allocation should be as flexible as possible and should be very much a matter of local judgment. Allocation in private law cases will have to follow a similar pattern. The present practice in private law cases of issuing proceedings in the county court even though there is a choice of jurisdictions would not be changed by my proposal, what would change

is the allocation thereafter to the most appropriate available tribunal within a unified court.

47. On any view, proper statistics must be collected and made public by HMCTS or some other public body. There must be a proper IT system. One of the FJR's constant refrains is that there are no "numbers". One DFJ complains to me that he lacks the basic information to know how he and his fellow judges and magistrates are coping with their difficult workload or even how much work each judge has been allocated. This must change and change quickly. My aim is to ask for management information to the same standard and in the same style as that provided for proceedings in the criminal jurisdiction.

Case management

48. And so I come to the most important point of all. Case management and judicial continuity are the key issues for the judiciary. The problems are easy to identify, but not so easy to tackle.

49. Judges simply have to take control (the FJR calls it "ownership") of a case - whether public or private. In Leeds, for example, the civil judges and DJs in particular have developed a "docketing" system. The case is allocated to an identified DJ and he or she stays with the case throughout.

50. It will, in my view, be good practice to write the name of the allocated judge on every file, so that when the case comes back, it comes back to that judge. Hand in hand with this must go the power to list. The judge who hears the case which has to come back must fix it for a date on which he or she can hear it.

51. Once again, power goes with permanence. The judge who is in the same location can case manage and can deal with the case when it comes back. This has simply got to happen. If it can be done in location A, it should be possible in location B. That is what the FJR says, and I agree.

52. It seems to me that in each and every case the practice simply must to be developed whereby at the first appointment the court asks itself a very simple question: "what is this case about?" The court, with the assistance of the parties, can then decide how the identified issues are to be addressed, what evidence is required and what does and does not require investigation by the child's guardian.

53. In practice, of course, the CMC is often adjourned, and there are sometimes several CMCs. Professor Judith Masson, in the research to which the FJR refers, attributes this not to judicial incompetence, but to lack of time and training. In her view, many care cases are advocate led because the judge simply does not have the time to go through the papers. With too many cases in his / her list, any agreement brokered by the advocates is "rubber stamped" by the judge, who is only too glad to have an agreement which absolves him / her from reading the papers. That is a situation which must be addressed.

54. I acknowledge that this is amounts to a substantial cultural change. It may not happen quickly. I recognise the traditional role of the English judge but times have changed, and we must change with them. We judges are now all case managers. This does not means that we are any less judges; that function remains, and remains as the most important function we have. However, we must be involved. We tell the parties what evidence is to be called.

55. And, as I say, with case management goes judicial continuity. The two are inseparable. This is what the FJR says – in effect – and I agree. Active case management and judicial continuity are the two principal contributions which the judiciary can make to the problem of delay. This is, as I have already stated, a substantial cultural change, but it is one which much be made.

56. I have not dealt with the question of training, but it is of considerable importance nonetheless. Case management does not come naturally to many judges, and training in it will be necessary. Training, in my view, should be directed towards the propositions that from the first appointment onwards the judge (1) should take sole control of the case and (2) should be proactive, identifying issues and ensuring that the evidence in the case is being collected swiftly and in a way which will most help the judge.

57. All this can only be done (1) if there is a willingness on the part of the bench to case manage; (2) a determination on the part of the judges to insist that their case are heard promptly; and (3) an insistence on the part of judges that cases can and must be listed when the judge wants them to be listed. Care cases – as I have already said - cannot wait for the judge to become available.

58. I appreciate that I have not addressed a number of the other facts which add to delay and drift. The delay in appointing guardians – the perceived need to instruct "experts" to re-do work which has not been done by others. All this is highlighted in the FJR. Some cases will never be finished in a target of 26 weeks. But I began the paper by making it clear that I was looking at the FJR from essentially a judicial and practical perspective: and I remain of the view that

proactive case management and judicial continuity are the two principal benefits which the judges can deliver.

The legal profession

59. So far, I have look at family proceedings relating to children purely from a judicial perspective. I remain of the view, however, that it is essential that parents and children retain the right to good quality legal representation. In this I am in agreement with the FJR, which comments that "the supply of properly qualified family lawyers is vital to the protection of children"

60. There is an important place for the legal profession in family justice. The role of the profession in care proceedings is, of course, to support the judges in the changes which we have to make. Family lawyers, in my experience, do not prolong cases or cause undue expense. The good family lawyer gives sensible, realistic advice.

61. Against this background, it is a matter of considerable anxiety to me that the government propose to take nearly all private law family work out of the scope of public funding. Family lawyers represent some of the most vulnerable people in society, and often do so at times of great stress. This, of course, comes on top of the 10% cut in fees.

62. Whilst I strongly support all forms of ADR (including, of course, mediation) I have considerable concern that the public funding of mediation – welcome as that is - will not be sufficient to resolve the problems of the myriad of unrepresented litigants who will come before the family courts. We are already seeing a radical increase in litigants in person, and the stringent criteria for representation in

cases of domestic abuse make me concerned that the system will be unable to do swift justice in a large number of cases.

63. I would like to pay tribute to the hard work done by the Family Law Bar Association on the Legal Aid Sentencing and Punishment of Offenders Bill and will watch with concern its continued progress through Parliament. I am impressed by the Family Bar's work on Mediation, and by the fact that a number of practitioners along with their Law Society colleagues have qualified as mediators.

64. There is no doubt that we all face very difficult times ahead. I remain of the view that a strong bar is essential to the preservation of essential values in our society, and that if the next generation of family lawyers disappears, we shall all be very substantial losers. Thus although this paper has been about changing judicial culture, I assure you have not lost sight of the importance of the bar in that process.
