



Courts and Tribunals Judiciary

Why Relationships in Family Justice are Important

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INTRODUCTION

I have titled these closing remarks “Why Relationships in Family Justice are Important”. That might seem a peculiar title given that, self-evidently, family relationships form the core of the work of the family court. But in the half an hour or so allotted to me this afternoon, I want to speak about the seminal importance of the relationships between those who *work* in the family justice system, in the context of an event that has been considering “Relationships, People, Practice and Family Justice”.

It is perhaps helpful if I start by providing a little context by explaining who I am and what my job is.

I am a High Court Judge in the Family Division. Prior to being appointed to the High Court Bench in 2015, I practiced as a barrister for twenty years in Birmingham, latterly as King’s Counsel. After a common law pupillage, I specialised in the law relating to children. I was educated at state schools and did a non-law degree at Nottingham University, in archaeology, before undertaking a law conversion course.

My current roles including being the Family Presiding Judge for London, which means I have responsibility for the work of the family courts in London, reporting to the President of the Family Division. I am also the Deputy Head of International Justice for England and Wales, which gives me responsibility for maintaining relationships with other family court jurisdictions, and a perspective on how those jurisdictions promulgate and implement family law.

WHY IS FAMILY JUSTICE IMPORTANT?

Before turning the question of the seminal importance of the relationships between all those who work in the family justice system, it is important to recall why family justice, and the family justice system, is important.

History is always a good starting point for any argument that seeks to establish the importance of something, not least because it can illuminate the deep nature of the foundations that underpin the chosen subject. This is no less true of family justice.

The fundamental principles underpinning what we today call family justice are of great antiquity, in circumstances where human beings have needed to find a way to resolve the questions and disputes concerning personal status, families and, although much later, the welfare of children, for the span of human history.

Going back as far the Old Testament, the story of King Solomon concerns what is, essentially, a family law case. The conventional dates of Solomon's reign are about 970–931 BCE. His wisdom is also venerated in the Jewish and Islamic traditions.

The story of the wisdom of Solomon deals with questions of child neglect. The deceased child having died when he was overlain by his mother, a cause of death that, tragically, the family court still sees on a regular basis in care proceedings under Part IV of the Children Act 1989.

The story also deals with a question of personal legal status, namely the status of being a parent, in requiring a decision as to which woman was the mother of the surviving child, in the same way as the courts are today often required to examine the status question of parentage under the Family Law Act 1986.

A number of other features of the story of Solomon are also recognisable to the modern family justice system. The fact that both women in the story were prostitutes had no bearing at all on the King's final judgment, reflecting a fundamental principle that we seek to apply in the family court's today. Namely equality before the law regardless of background, gender or other protected characteristics.

The story also reflects, in emphasising that all of the kingdom heard of King Solomon's judgment and saw his wisdom, the importance of the wider population having confidence in the way justice is administered by the State, a topic on which the family courts are working in an attempt balance personal privacy with ensuring public confidence in the family justice system through greater transparency and more constructive engagement with the media.

Within this context of the long and enduring importance of justice with respect to children and families, our modern system of family justice is important in our modern world for four key reasons.

First, family justice affords predictability. Family justice helps to lend a predictable legal structure to the family relationships that comprise a significant part of the framework of human society. Family justice is a means of mediating how we relate to each other and how our relationships are regulated in the context of that society. Family Justice provides a structure within which legal and social norms can interact to arrive at rules governing everything from same-sex marriage, polygamy, alimony, unmarried cohabitation, gestational surrogacy and assisted reproductive technologies to child support, parental rights and responsibilities, children's rights, medical care, adoption, family immigration, religious freedom, the rights of paid caregivers and family relationships that are not necessarily biological, legal or conjugal.

Second, family justice assists in mediating social change. Family justice provides a framework within which to manage change in society, again by affording a structure for the creation from legal and social norms of acceptable legal principles and forms in order to mediate, where necessary, changes in society that might otherwise result over time in disagreement, unrest

or open conflict. As John Eekelar recognises, family law interacts with social norms, both reflecting those social norms and seeking to create its own.¹

A defining characteristic of family justice is that its continuing development reflects closely developments in society. A family does not exist in a social, legal or political vacuum. It interacts with the wider world in each of these domains. In such circumstances, it is very often the family courts that see the first cases to arise from an emerging social issue or trend. National, regional and global changes may each impact on the type of issues that the family law is eventually required to address in a court of law. As Lord Sumption noted in the case of *Prest v Petrodel*, the family jurisdiction is not an island unto itself.

Within this context, family law is a cut glass prism through which society comes to view many of the seminal social, scientific, philosophical and religious developments in a given period.

Whilst changing social norms can be addressed philosophically, in terms of whether a particular social practice is right or wrong as a matter of ethics, or politically, family justice often provides the most immediate forum for the debating and resolution of new social issues affecting members of society. It is the family justice system that very often is the first legal context in which solutions to these issues are explored in order to resolve new and complex problems that stand at the limits of the current law. The examples of this are legion.

The cases that have come before the Family Division in the past two years or so include the question of whether 16 years olds able to consent to the administration of puberty blockers? Should medical treatment that doctors say is futile be withdrawn from a child if the withdrawal of that treatment would lead to death? Can the High Court use its inherent jurisdiction in order to protect a child by authorising a local authority to take step that Parliament has deemed unlawful? Does removing a child's phone constitute a deprivation of their liberty? How should the courts decide who is telling the truth when allegations of domestic violence are made?

Third, family justice provides conflict resolution. Family justice is important is because it offers one of the means of maintaining the integrity, stability and wellbeing of society by providing a legal framework for resolving disputes as between members of society and between members of society and the State in respect of the rights and obligations attendant on family relationships that might otherwise be insoluble without recourse to conflict.

It does this, in part, by maintaining the rule of law, the principle that all citizens and institutions are accountable under the same law, with respect to the personal status and familial relationships with which family law is concerned. Family justice creates a set of rules of sufficient generality, clarity, stability and prospectivity, based on the norms that govern a society and under which all members of society are equal, by which disputes regarding personal status and familial relationships can be resolved.

In this way, by reference to the same legal principles applicable to all, serious disputes about family life can be settled. Thus, for example, the individual who seeks to resist State intervention in their family life following allegations of child abuse can be confident that the applicable legal principles are clear and certain and consistent. Laws established by reference to established social norms concerning parenting standards and governing where the line lies

¹Eekelar, J. (2018) 'Family and Legal Theory, in E. Brake and L. Ferguson (eds) *Philosophical Foundations of Children's and Family Law*, Oxford: OUP.

between interests of parents in caring for their own child, which is ordinarily in the best interests of the child, and the circumstances in which the interests of the child may dictate a need for his or her care to be entrusted to others.²

Fourth, family justice is important because it provides practical solutions. Family justice is important because it provides individual members of society an accessible 'real world' means of establishing and protecting the rights that arise out of, and of enforcing the obligations consequent upon, their personal standing and familial relationships, both as between each other and between individuals and the State.

This means that an individual can go to a court to seek protection from domestic abuse or child abuse being perpetrated against them by a family member, they can seek financial relief following the breakdown of their marriage and they can seek redress in disputes over when and where they are permitted to spend time with their children.

WHY ARE RELATIONSHIPS IMPORTANT IN FAMILY JUSTICE?

Why then recount the importance of family justice and the family justice system? Because I think that doing so demonstrates why strong, respectful and collaborative working relationships between those involved in family justice, that this event has so successfully illuminated, are important.

In providing a predictable legal structure to family relationships, a clear framework within which to manage change in society, a system for mediating family disputes as between members of society and between members of society and the State and an accessible 'real world' means of establishing and protecting the rights and enforcing obligations, family justice necessarily covers a very large range of issues and is informed by a very large range of disciplines. Because of this, family justice needs to draw on the knowledge and experience of, and to work with, a wide range of individuals. Because of this, it is also vital that family justice benefits from the different perspectives and experience of those individuals.

For the family justice system to be effective in this context, it is essential that the relationships between the individuals involved in the system are strong, respectful, collaborative and, sometimes, questioning. There has been a firm foundation for this approach since the very early days of the Children Act 1989. We can see the reasons for promoting such relationships reflected time and again in the material that informs practice in the family justice system.

By way of example, I grew up as a barrister practicing family law with 'Working Together to Safeguard Children'. My understanding of the importance of relationships in the field of family law will forever be based in that seminal document. It is worth revisiting the most recent version, published in December 2023.

That concept of working together, of building strong, respectful and collaborative working relationships has rightly come to permeate many areas of practice in the family justice system, and more widely in the health and social care systems, for good reason. In that context, the theme of this event of "Relationships, People, Practice and Family Justice" remains, and will always remain, a vital one as will the topics you have debated in that context today, which have included the following.

² *Re H and Ors (Minors)(Sexual Abuse: Standard of Proof)* [1996] AC 563.

Building Relationships in Difficult Cases

In the context of the subject of building relationships in the most difficult cases, it is illuminating to reflect on the principles set out in Working Together. Those principles include recognition that that effective partnership working with parents and carers happens when practitioners, and professionals working in other settings, build strong, positive, trusting, and co-operative relationships by approaching families with empathy, respect, compassion and creativity, avoiding reinforcing family shame, suffering and blaming, using strength-based approaches to working with parents and adopting responses to meet diverse needs.

It is also noteworthy, in the context of the topics covered at today's event, that Working Together also emphasises the need for practitioners to build strong relationships across agencies and disciplines in order to ensure effective working together between professionals, including the timely and proportionate sharing of relevant information. In this regard, another seminal work that was to the fore during my time of practice was Making Good Assessments by Pat Beesley. The second edition in 2010 highlighted the importance of all those involved in care planning sharing a common understanding of, and the ability to articulate concepts to other professionals and to members of the family.

Communication and Neurodiversity

In the context of communication and diversity, the need for good working relationships is also highlighted when one considers the complexities of seeking the views of children.

To achieve this task effectively, the family justice system needs an understanding of, amongst other matters, the developmental issues that impact on the child's ability to communicate views and the significance of ethnicity and culture.

With respect to the developmental issues that impact on the child's ability to communicate views, there is enormous and wonderful variation between children.³ In circumstances where the child's needs, whether arising out of them being neurodiverse or driven by other factors, will vary chronological age and developmental age will not necessarily coincide. There is no inevitable exponential link between increasing age and the ability to form clear, considered views on a given subject. In such circumstances, it is vital to consider the individual child and his or her individual circumstances when ascertaining, and deciding what weight to give, that child's wishes and feelings. Depending on the needs of the child, this may require strong, respectful and collaborative working relationships between a number of professionals and practitioners.

With respect to the significance of ethnicity and culture, of the population of this city, 46.2% of residents identify with Asian, black, mixed or 'other' ethnic groups, and a further 17.0% with white ethnic minorities.⁴ There are over 300 different languages spoken in London.⁵ It is important in this context that those seeking to ascertain the authentic views of children from diverse ethnic and cultural backgrounds develop an awareness of race and culture, that they understand the child's perspectives and needs arising out of his or her ethnic and cultural background and that any discriminatory attitudes or prejudices are addressed. In seeking to establish the views of a disabled child, it is important not to misjudge abilities and make

³ Jones, D.P.H. (2003) Communicating with Vulnerable Children, p.23, London: Gaskell.

⁴ England and Wales 2021 Census.

⁵ London Assembly MQT, 21 February 2006.

unwarranted assumptions based on stereotypical ideas, whilst being alive to difficulties in communication consequent upon a particular disability. It is particularly important that issues of culture, race and ethnicity, or of disability, are not treated simply as factors to be accounted for in communicating with the child, but rather that they are integrated into, and permeate, the whole effort to ascertain, understand and act on the views of the subject child.⁶ Again, this necessary approach will likely require strong, respectful and collaborative working relationships between a number of professionals and practitioners involved with the child.

Transparency and the Media

The relationship between the family courts and the media is likewise increasingly important.

If you are minded to explore the volumes of the Family Law Journal for the mid to late 2000s you will find in their pages a number of articles by a seemingly very angry young man called Alistair MacDonald arguing against the proposals at that time to increase transparency in the family courts.⁷ My views changed when I became a Judge, and not just because of the duty on me to apply the law as it is, rather than what I believed it should be.

To be fair to myself, in my early writings on this issue I had acknowledged that there was a need for better public understanding of the role of the family courts in safeguarding and promoting the welfare of children, and of how the court process achieves that aim. But the genesis of my conversion was more fundamental and grounded in a consideration of the importance of family law, the reasons for which I have already recounted in summary.

Within the context of those matters, society as a whole not only has an intense interest in how the family court applies family law, but it is critical for the maintenance of the rule of law that society understands and trusts in the institution that is family justice. We have seen over recent history the risks inherent in a loss of faith in institutions. Where the family court is tasked with mediating disputes as between members of society and between members of society and the State that arise in respect of the rights and obligations attendant on familial relationships, public confidence in the institutions of the family justice system is vital if that system is to discharge effectively its role in society.

This necessarily means that, whilst *all* reasonable efforts must be made to maintain the anonymity of the family and the confidentiality of particularly sensitive information, the application of family law by the family justice system must be transparent to the public so that the public can understand its operation and that operation can be accountable to the public. Subject to safeguards, transparency to facilitate media scrutiny is vital to that end.

CONCLUSION

Family justice is grounded, in the final analysis, in human relationships. Within that context, the efficacy of family justice is highly dependent on the establishment and maintenance of effective human relationships, be it with the children and adults whom are the subject of the family justice system, with their families and communities, or with fellow professionals and the agencies for whom those involved in family justice work. If these relationships are not well-established, strong, respectful, collaborative and sustained, or if they fail, the

⁶ Jones, D.P.H. (2003) *Communicating with Vulnerable Children*, p.53-54, London: Gaskell.

⁷ *Openness – Refocusing the Debate* [2006] Fam Law 855 and *Bringing Rights Home for Children: Transparency and the Child's Right to Respect for Private Life* [2010] Fam Law 190.

consequences can be serious for some of the most vulnerable in society. At the extreme end of the spectrum, the consequences can be fatal.

Well-established, strong, respectful, collaborative and sustained relationships are also key to developing more integrated working between the agencies that are required to co-operate in meeting the needs of the most vulnerable children, particularly between health and social care. For such integration to be successful in meeting those complex needs, the development and maintenance of such relationships is essential.

Within this context, events such as this are vitally important. Once again, the family justice system is a human system with the task of resolving human issues. It is therefore not only right, but necessary, that at the heart of the system must be effective human relationships. It is extremely important that that approach continues to be promoted by the LFJBs at events such as this.

MacDonald J

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