

The Family Court System

Introduction

I'm delighted to be here to meet you.

I know that you know why the work of the family courts is so important. That is why you have dedicated your career to it.

But I want to tell you how it looks to me (as a Member of Parliament and now as Minister for family justice) and say why I see it as so important. So you can have the opportunity to tell me whether I have got it right.

The importance of the family courts

How it seems to me is that family courts make decisions that have important effects on people's lives and that affect people's lives forever.

Denying a parent contact with their child effectively ends that parent/child relationship.

Failing to deny contact can put the life of the mother, or the child at risk.

Taking a child from its mother and placing it for adoption changes the life of that child irrevocably. The right judgement can mean the child's life can be saved. But taking a child from its birth mother is, if it's a miscarriage of justice, no lesser injustice than a wrongly imposed life sentence - both for the mother and the child.

And even making agreed orders can have far reaching implications - as Lord Justice Wall's "29 child homicide" case report showed.

It is hard, then, to overstate the importance of the work that you do and the difficult judgements you have to make.

Big changes affecting the work of the family courts

Of course each case has to be judged on its merits and the interests of the child. But the context has changed and many of the comfortable certainties about attitudes towards families are no longer there.

Many more people are affected by decisions of the family courts than used to be the case. Over 400,000 family cases every year

Change in family structures, change in social attitudes, greater cultural diversity, new reproductive technologies and global mobility bring new challenges to the family courts.

- Once married people used to stay married. Now one in three divorce.
- Women used to have babies after they were married. But in 2004, 42% of births were outside of marriage - and now one third of children are living either with a lone parent or with one parent and a stepparent. New patterns of family formation pose new problems for the courts.
- Changes in previously accepted social attitudes have faced the family courts with new challenges.

Sometimes a child's best interests will be to be resident with the father rather than the mother. Sometimes it is right to leave a child with parents with learning difficulties.

- The emergence of and prevalence of new social problems - such as children at risk because of parents suffering the scourge of drug addiction - join the age-old problem of alcohol.

So while what hasn't changed is that family breakdown causes dispute and unhappiness and child cruelty and neglect must be prevented, just about everything else has changed. In the past not only did the courts have far fewer cases to deal with, they would not have had to understand the different cultural issues that arise from attitudes towards the family that exist in the multiplicity of cultures that now exist in our communities. They could rely on comfortable certainties about the respective roles of men and women within the family. They would hardly ever have to deal with children from parents in different countries and they would never have had to deal with family law issues around a child born through IVF to a woman in a lesbian civil partnership that had broken down.

So your work - which is so important - is becoming ever more difficult.

Improving the way the family courts work

As the Minister for Family Justice in the Department for Constitutional Affairs, I want to work alongside you as you seek to improve the processes in the family courts.

I'd like to thank Mark Potter and Ernest Ryder for the leading contribution they have made to the work on the Childcare Proceedings Review.

We need to ensure that early intervention, along with better engagement of parents and children in the process, is the norm. And that where it is safe and appropriate to do so, cases can be resolved without needing to come to court.

When cases do come to court the aim is to ensure that they are better prepared so that the agencies, properly carrying out their duties make sure there is no unnecessary delay in any case.

To ensure that this review delivers the intended results I will be chairing a Ministerial Group attended by the President of the Family Division; Parmjit Dhanda MP who is the new DFES Minister; Brian Gibbons who is the relevant Welsh Assembly Minister; as well as representation from the wider organisations involved in care proceedings. Together we will oversee implementation of the changes arising from the review. We will meet for the first time in early Summer this year and we will make sure that you see the minutes of those meetings and are able, through your President, to bring issues of concern to the attention of that Ministerial Group.

And I am aware, too, of the work that Mark Potter has led to ensure that family cases can be decided as swiftly and as locally as possible through implementation of the Judicial Resources Review that cases should be heard as swiftly as possible at the appropriate level of court nearest to the family concerned. This involves the need for a specialist magistracy and strengthening of the work of the Family Proceedings Courts.

I know Lord Justice Thorpe, is leading vital work in his role as Head of International Family Law, and working to improve international judicial liaison. Now there is global mobility and complete freedom of movement within the European Union, parents might after relationship breakdown, be living, or want to live, in different jurisdictions. Just as the criminal justice system recognises the importance of working across international borders, so does the family justice system.

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The view of family courts - from outside the system

So how do we ensure that all your work is understood and valued?

Generally speaking, I think people don't understand the complexity and importance of the work of the family courts.

And I think that is unfortunate.

When the courts are criticised, rebuttal of those criticisms has to depend on assertions from those within the system. But gone are the days when simply because you were judges, caring and highly intelligent people, that the public would accept what you do and the conclusions that you reach. That is the same for any institution now.

Public confidence in any part of the legal system is necessary for its own sake but also because:

- It is necessary if people affected by court judgements are to accept them
- It is necessary if the work of those in the professions involved with the family justice system is properly respected and valued
- It is necessary if the system is to attract, on a sustained basis, the human and financial resources it needs to do such important work

Public confidence depends on public scrutiny. It has to be seen to be believed and justice not only has to be done it has to be seen to be done - including in the family courts.

Openness and public confidence

Greater openness will mean a greater understanding of the work that the courts do.

It is important that a system which affects so many is understood by all. It is important that a system which makes such major decisions in peoples lives commands public confidence. And it is important that the family court system which needs resources for its buildings and its running costs and for legal representation is valued by those who pay for it - the public.

I think, in this day and age, it is hard for people to value what they cannot see.

It is hard for people to have confidence in something which is closed.

It is impossible to defend a system from accusations of bias and discrimination if it operates behind closed doors. And that applies to all of us, you as judges and me as the Minister accountable to parliament for the family justice system. How can parliamentarians hold me to account for a system which they cannot see? How can I account to them for a system which I can't see? Unless of course I get special permission from the judge or magistrate concerned. Parliamentary accountability for the family courts is wholly theoretical while the system remains closed.

Privacy is necessary to protect families seeking justice - but privacy is not necessary to protect the courts. The courts have nothing to hide. Far from it.

Protecting privacy in an open family court system

When we make the courts more open, we need to ensure that we have tough penalties for those who overstep

the mark. There need to be clear and effective penalties for those who breach anonymity.

I am in no doubt about the absolute necessity for there to be clear understanding of and zealous enforcement of anonymity for families and children involved in family proceedings.

We will not allow there to be a situation where confidence in the family courts rises as it allows its work to be seen, only to have that confidence collapse through children or parents suffering the anguish of being identified - either directly or indirectly.

We will be including proposals on enforcement when we publish our plans next month for consultation.

Families need confidence in the outcome of the case and the public needs confidence in the system. I don't think the interests of families and the public interest are in conflict. They are the same.

I am aware of the steps that you have already taken to make the work of the family courts open. Making judgements in public - as Andrew McFarlane did in the case of Re X: Emergency Protection Orders. Preparing annual reports for the courts - I've seen the impressive reports of Merseyside, Greater Manchester and Cumbria. I know that you now publish the national and local FJC minutes - the public can see what the issues are and how you are tackling problems.

Bringing about the change

And I know that the Senior Judiciary have made it clear to the Constitutional Affairs Select Committee that they support that committee's concern for openness. We will respond to the call for change. Change that allows public accountability and guarantees family anonymity, and change that allows public confidence and guarantees family confidentiality. And how we go about that change is important:

- We need to agree the change;
- We need to see what we can do in advance of legislation to try out the change
- We will need to legislate and
- We need to monitor the change to make sure it is working in the way that we all intend.

To that end, I will shortly be publishing proposals for change in a consultation document.

- When it is clear what the consensus is on the practicalities of the changes I hope the judiciary will consider whether, and to what extent, we can "pre-figure" that change by changes in practice that you already have the jurisdiction to effect.
- We will then need to legislate - but your having already pre-figured the change - perhaps through a practice direction from the president - will enable us in parliament to be more confident, enable the debate to be less abstract and enable us to have a clearer sense that the legislation that we are debating will indeed have the effect we want and no unintended consequences.
- One of my concerns is that in parliament we spend a lot of time discussing legislation without institutionalising what I want to call "post-legislative scrutiny". We need not just to get the policy right and get the legislation to match the policy. We also need to discover whether the legislation, when implemented, has had the effect that we intended and has not had unintended unwelcome consequences. We do, of course, have the very important select committee system. But what I am talking about is the government itself making itself accountable for reviewing and reporting back on how legislation is working.

This is what New Zealand are planning to do later this year, when they review the changes they made last July to introduce greater openness into the family courts.

Court staff and buildings

I am aware of the importance of the court staff and the court buildings to the work of the family jurisdiction. There has been concern about reports that the courts are to suffer an 8% budget cut. I want to be clear about what is happening - there is not an 8% cut across the board, and some areas will hardly be affected. However, the courts, like all parts of the public sector, are being asked to use their resources as efficiently as possible. We have to live within our means. Creating HMCS has provided us with an opportunity to realise the benefits of unification and achieve efficiency savings.

And we are hoping that we will see some PFI projects providing new court centres.

The need for good public funding of family legal work

I know that as former practitioners in family law you will be concerned, as I am, that wherever they live, people are able to get the advice and representation they need. It is not acceptable that despite more than a 33% increase in the legal aid budget since 1997, and an overspending in that budget currently running at £150m a year, publicly funded family law is being squeezed.

What has happened is that while criminal legal aid has seen a 37% increase and is spending £340m more pa in real terms, spending in civil and family legal aid has shrunk by 24%, some £220m a year.

Now we do want to ensure, for the sake of families and children that cases do not come to court unless they have to. But when they do, I recognise the great importance of the high quality legal preparation and representation that the family solicitors and the family bar provide.

In the Department for Constitutional Affairs, our concern is to get our spending back within our budget, redistribute legal aid from criminal to family and civil and (in criminal cases) redistribute from the top of the bar to those in their early years of call.

Our new minister in the Department for Constitutional Affairs, Vera Baird, is now responsible, with the Lord Chancellor, for legal aid. But I will ensure that the attention of the Carter review and my ministerial colleagues does not wander from the importance of the provision of a good supply of good family solicitors and barristers.

Conclusion

Into my constituency advice surgery over the last two decades, there has been a steady stream of women coming into my surgery complaining that their children have been taken into care without due reason, neighbours alleging child cruelty and complaining that the children haven't been taken into care, mothers complaining that they have been forced to allow what they claim to be a violent ex-partner to see their children, and fathers who claim that on no evidence they've been banned from seeing their children.

I regard the protection of children and making decisions that cannot be agreed between warring parents as of the greatest importance and as a member of parliament I have a long-standing interest in the work of the family courts. So I'm delighted to be Minister in the Department for Constitutional Affairs, accountable to the House of Commons for the work that goes on in the family justice system.

I have already been greatly helped by the generous advice of Mark Potter, Matthew Thorpe and Ernest Ryder in my first few weeks as Family Justice Minister. As I was by Andrew McFarlane during my work on domestic violence for 4 years as Solicitor General. So I hope that as well as your important liaison with DCA

officials - you will ring me up and we will keep up a continuous discussion. Darren Tierney my private Secretary who is here with me today will arrange that. I'm happy to see anyone in the family justice system who wants to talk to me. That's how I hope we'll make progress.

I hope to be able to support you in your work, to make legislative changes where they are necessary and to do what I can to ensure that the importance of your work is recognised and acknowledged in the way that it deserves.

Highgate House, Northampton

Minister of State for Constitutional Affairs

Harriet Harman MP

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