



PRESIDENT OF THE
FAMILY DIVISION

Annual Dinner of the Family Law Bar Association

Speech by Sir James Munby, President of the Family Division

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at the Middle Temple

Madam Chairman, Mr Vice Chairman, officers and members of the Association, former Presidents of the Division, distinguished guests, fellow family practitioners –

Much has happened since the last occasion when you were kind enough to ask me to speak at this splendid event. You hardly need reminding that April last year saw the implementation of family justice reforms which are already so deeply embedded that we take them almost for granted. Care cases have been transformed – and their average length continues to fall. We are making great progress in the equally necessary transformation of private law cases. We have new family courts in West and East London, created from scratch in remarkably short time under the inspirational leadership of Judy Rowe and Carol Atkinson. The Central Family Court has been, at least in parts, refurbished, and continues to improve under John Altman’s determined leadership. Elsewhere, dedicated judges under the devoted leadership of our Designated Family Judges, make the most of what is possible in often inadequate and dilapidated buildings.

There remains, inevitably, much to do, but family court users are already experiencing the benefits of what we have been doing. It is a great achievement but – and this is the key point – an achievement in which we have ALL played a part and in which we can ALL take pride. I would have been able to accomplish nothing without the support and commitment of the family bar, of family solicitors, of family judges and of everyone else who has a role to play in the family justice system. Thank you! Thank you!

Your dedicated support, matched of course, by your fierce commitment to your clients, typically some of the most disadvantaged and vulnerable members of an often uncaring society, which neither understands nor wants to understand what we do, is remarkable. You are truly the largely unsung heroes; in particular, those of you who work tirelessly and *pro bono* for the parents who would otherwise be unrepresented. You have my admiration and gratitude. And all this at a time when, of course, all parts of the family legal profession are subject to acute financial pressures.

So what of the year ahead? Our primary task is retrenchment and consolidation – making sure that all the reforms are properly embedded, that all the good work continues, that there is no backsliding.

But although the pace of reform, you may be relieved to hear, has slowed, there are important changes in view. Can I focus on just two?

The first relates to our entire approach in the family justice system to involving children in the process – both in the individual cases that affect them but also more widely in the family justice system. Given their centrality to almost everything we do, given that their welfare is, after all, our paramount concern, it is striking how comparatively invisible children are in the family justice system. They are very much more visible in the criminal justice system, including in the adult criminal justice system. We need, in particular, to re-examine our approach to the related but distinct issues of children giving evidence and children meeting and talking to the judge.

Related to this, there is the wider issue of how we treat the vulnerable, whether they come before us as parties or as witnesses. Vulnerability comes in many forms. In our understanding of these issues, and in the practices and procedures which are in place to enable the vulnerable to participate fully and fairly in our courts, the family justice system lags woefully, indeed, shamefully, behind the criminal justice system.

The working party I appointed under the leadership of Hayden and Russell JJ to examine all these issues, has published its interim report. The final report is due any day now. There is much to be done, not least by the Family Justice Council and the Family Procedure Rules Committee. But, most important of all, both the judges and the advocates will need training,

like the training which has for some time been familiar in the criminal justice system. A working group led by Newton J is hard at work. There is much for the Bar to do: it is, if you will allow me to say so, one of the most pressing and immediate tasks facing the FLBA. I am sure you will all rise to the challenge.

The other great change in prospect – and this may come to be seen in retrospect as even more revolutionary than all the changes we experienced last year – is the reform of the court process to bring it into the modern electronic world. This is long overdue, but there is reason to believe that we stand on the brink of changes that would have seemed impossible, impossibly visionary, only a few years ago.

Making proper use of modern electronic methods means more – much more – than merely substituting the word processor for the typewriter or the quill pen. In terms of our processes, the advances of modern technology will involve at least five changes.

The first, which in large measure has already occurred, is the introduction of an efficient electronic court diary. F-diary, as it is called, is an immense improvement over its unlamented predecessor, E-diary. The second development is the increasingly common requirement, particularly in care cases, that documents are to be transmitted to the court electronically, by email, rather than in paper form. This enables the court to create an electronic rather than a paper file. Designed in Manchester, improved in Bristol, this has now been taken a stage further in Newcastle. There the requirement is for the local authority in a care case to send the court an electronic court bundle, so that anyone who wishes to – the judge included – can use a laptop or iPad rather than the too often so unsatisfactory over-stuffed, broken-backed lever arch file. The other innovation pioneered in Newcastle is the integration of F-diary with the electronic court bundle: one click on the relevant entry in F-diary brings the bundle instantly up on screen.

Thus far we are in the early days of this third development. Just round the corner is the fourth development, the introduction in the family justice system of on-line issue of proceedings. We live in a world in which we do so much online, whether it is buying household goods, paying our bills, booking our holidays, paying our taxes, ... so the list goes on. But how does one issue an application in the family court? If there is still a counter, one can attend the court in order to issue, just as our ancestors did in the days of Dickens. Or

one can use the post – the latest technology in 1840 but now rather dated. Or perhaps one can send an email – hardly cutting edge technology and in any event not much favoured by HMCTS unless, and most do not, you have access to secure email.

The way of the future must surely be online issue. Most steps in the process of obtaining a divorce, for example, lend themselves very easily to an entirely electronic online process. At what stages in the process is human activity required? There are only two: first, in deciding whether the pleaded facts, if true, amount, for example, to unreasonable behaviour; second, in pronouncing the decree in open court. Everything else can, in principle, be done electronically, at great savings of both time and cost. That will, I suspect, only be a start. Online issue and electronic court files and electronic court bundles will increasingly make paper a thing of the past.

But the most exciting prospect is the one unveiled a few days ago in the Civil Justice Council's report – where in appropriate cases the court hearing itself can be conducted online, everybody participating electronically and without the need for anyone, even the judge, to be present in a court room.

We are justly proud of our splendid new court building at Canary Wharf, where the East London Family Court sits. But when our court files are all electronic, when increasing amounts of litigation and many trials are being conducted online, what will the court building of the future be? Perhaps the Palais de Justice of the future will, much of the time and in many places, be little more than a virtual presence on the cloud.

At this point you may be thinking that I have taken leave of my senses. Time will tell. I merely remind those of you too young to remember those days, that when I first came into the law, over 40 years ago, legal 'high-tech' was the electric typewriter and the telex. There was no fax, no internet, no email, none of the electronic gadgets – the laptop, the iPad, the list is almost endless – which we now take for granted. Who can know what things will be like in the Family Court in 2050? Of one thing I am confident. When my successor in 2050 comes to draft the electronic equivalent of PD27A, the bundles practice direction, she – perhaps she is sitting here tonight – will probably think how quaint it was that once upon a time lawyers used sheets of paper held together in something, by then only to be found in the Science Museum, which was once called a lever-arch file.

We face an exciting, if challenging, future. You all have your part to play, because whatever else changes there will, I am confident, always be a need for family lawyers – family advocates and family judges. So the FLBA will continue – it must continue – to play its vital role in the family justice system.

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