PRESIDENT OF THE
FAMILY DIVISION

Address of the President Sir James Munby
at the annual dinner of the Family Law Bar Association
in Middle Temple Hall on
26 February 2016

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

On the last occasion when you kindly asked me to speak at this splendid event, I noted that the pace of reform had slowed. Our primary task last year was retrenchment and consolidation – making sure that all the reforms were properly embedded and that there was no backsliding. Today I have to tell you that we are now moving forward into a new phase of reform; reform so fundamental that in retrospect the great reforms implemented in April 2014 will seem modest in comparison.

Some of these are reforms which are already in progress – even if that progress has been much less rapid than I would have wished. In relation to Transparency, Dr Julia Brophy of Oxford University, together with NYAS and, very importantly and most revealingly, a group of young people, have produced a valuable research report analysing some of the effects of the Guidance I issued in January 2014. That work is now being supplemented with a further short research project by Dr Brophy. At the same time, Dr Julie Doughty of Cardiff University is undertaking some parallel and equally important research. I hope to be able, within the next few months, to issue for consultation draft Guidance on how better to anonymise judgments so as to minimise the risk of 'jig-saw' identification.

I spoke last year about the need to re-appraise 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 realms of policy and reform. I also drew attention to the fact that the family justice system lags woefully, indeed shamefully,

behind the criminal justice system in the practices and procedures which are in place to enable the vulnerable to participate fully and fairly in our courts. Implementation of the recommendations of the Hayden / Russell working party, as of the subsequent proposals of the Family Procedure Rules Committee, has been delayed as we await decisions by officials and Ministers on various funding and other resource issues. I live more in hope than expectation. My ambition is that the new rules and practice directions will be in place by the autumn.

But this is not all. In times of austerity, and faced with ever increasing numbers of litigants in person, we must constantly strive to improve, to streamline and to simplify the system. We cannot afford to be complacent or to imagine that there is not much that remains to be done – for otherwise unwelcome changes may be imposed on us from outside. One small, though I believe important, step is the further tightening-up of the *Bundles* Practice Direction by the imposition of pages limits for various types of documents. Consultation is under way: it has already produced mordant comment to the effect that for some unfathomable reason there is no proposal to impose page limits on judgments!

But more radical changes are in train. Settlement conferences – the broad equivalent in both private *and public* law children cases of the now familiar FDRs in money cases – are an established and proven part of the process in some Canadian courts. They are being trialled, with my enthusiastic support, in various courts in this country, starting with the Liverpool Family Court, where the early indications of success are extremely encouraging. I hope that we will soon be in a position where settlement conferences are as much day to day practice in children cases as FDRs are in money cases.

Innovative thinking will shortly see the piloting in selected courts of schemes for judicial and CAFCASS involvement in the pre-proceedings phase of some types of care case. The idea may seem astonishing – how can a judge be involved pre-proceedings? – but we have to think in new and perhaps very radical ways about how best to make the child's journey though the care system as seamless as possible. The judicial phase of the process as we currently see it is only a part of a much longer process which needs to be better planned and coordinated then at present, not least in the interests of the children, and the parents, caught up in the system. And new ways of thinking about the interface between the pre-proceedings phase and the actual proceedings might go a long way to addressing the problems surrounding the

use, and on too many occasions the mis-use, of section 20 – problems which, unhappily, have drawn much all too merited judicial criticism in recent months.

Back of all this, however, we have to address what I believe is the pressing need for a radical rebalancing of the very functions and purpose of the family courts. It is a truism that the fundamental difference between the civil courts and the family courts is that the civil courts focus on what has happened in the past, whilst the family courts look to the past only to identify the problem before focusing on what needs to happen in the future. But as we presently understand it, this forward looking aspect is usually confined to providing a solution rather than solving the underlying problem – or, typically, the concatenation of underlying problems. The family court must become, in much of what it does, a problem-solving court. You will be familiar with the excellent and immensely fruitful work being done in ever increasing numbers of cases in the ever expanding network of FDACs. Another similar project – Pause – is now in development, focusing on addressing the underlying problems of the all too many women who find themselves losing successive children in repeat care proceedings. Other projects are being considered. This is vitally important work. It improves the outcomes for children. It improves the lives of parents. And it saves money – large sums of money – for a variety of public purses.

And so to the real revolution: moving to the digital court of the future. We have scarcely begun to harness the real power of IT. As Professor Richard Susskind has pointed out, and it is a profoundly important message, at present we have hardly got beyond using IT to do the things we can do without IT. Moving from the quill pen via the biro and the electric typewriter to the word processor is progress of a sort – though a word processor is really little more than an electronic version of the printing press invented all those centuries ago in Renaissance Italy. But we must embrace the use of IT to do things that only IT can do.

Recent progress has been rapid, and the pace of change is rapidly accelerating. We have F-Diary. More and more courts are using eFiles in the court office and eBundles in the court room. But we still have a long way to go to the entirely digitised and paperless court of the future, though this is – must be – a vision not of some distant future but of what has to be, and I believe can be, achieved over the next four years of the Courts Modernisation Programme. The programme extends to the entire justice system: crime, civil, family and tribunals. It is a very tight timetable. It is a visionary programme of ambition unprecedented anywhere in the world. But it can be done; it

must be done; it will be done. And when it has been done, we will at last have escaped from a court system still in too large part moored in the world of the late Mr Charles Dickens.

In future, proceedings will be issued on-line. The applicant – and remember, the applicant will increasingly be a lay person bereft of professional assistance – will not fill in an on-line application form but an on-line questionnaire capturing all the relevant information while at the same time being much more user-friendly. Some processes will be almost entirely digitised: early examples will be digital on-line probate and digital on-line divorce, both planned for at least initial implementation early in 2017. Some proceedings will be conducted almost entirely on-line, even down to and including the final hearing. The judge, who will not need to be in a courtroom, will interact electronically with the parties and, if they have them, their legal representatives. The heaviest cases will of course continue to require the traditional gathering of everyone together in a court room, though probably only for the final hearing and any really significant interim hearings. The other hearings in such cases will increasingly be conducted over what we quaintly continue to call video links – though I earnestly hope using equipment much better than the elderly and inadequate kit to which we are at present condemned.

The visible consequence of all this will be court buildings rather different in design and function from what we are accustomed to and less frequently visited by the digitally communicating judges and practitioners of the future than they are at present.

The digital court of the future with its large population of unrepresented litigants will demand other radical changes to what at present seems so important and so deeply entrenched in our professional cultures. We need an entirely new set of rules; indeed, an entirely new and radical approach to how we formulate court rules. The Non-Contentious Probate Rules of today would be all too familiar in their archaic and sometimes impenetrable language to my distinguished Victorian predecessors, Sir James Wilde (better known to most as Lord Penzance), the first judge of the Court of Probate, and Sir James Hannen, the first President of the old Probate, Divorce and Admiralty Division. The Family Procedure Rules, like their civil counterparts, are a masterpiece of traditional, if absurdly over-elaborate, drafting. But they are unreadable by litigants in person and, truth be told, largely unread by lawyers. They are simply not fit for purpose. The Red Book, like the White Book, is a remarkable

monument of legal publishing, but, I fear, fit only for the bonfire. Rules, to the extent that we still need them, must be short and written in simple, plain English. But in reality, much that is currently embodied in rules will in future simply be embedded in the software of the digital court.

And, finally, the digital revolution will enable us to carry through a radical revision of both court forms and court orders. The thickets of numberless court forms – I speak literally; no-one knows how many there are, though in the family justice system alone they run into the hundreds – must be subjected to drastic pruning, indeed, radical surgery, before they are digitised. Court orders must be standardised – work on this is well advanced – and digitised, with standard templates, self-populating boxes and drop-down menus designed to ease and shorten the process of drafting and then producing the order. We must have proper wifi access in courts, to avoid the farce of counsel having to leave the building to find a spot on the pavement outside where they can communicate with the court. Given the marvels of modern IT, why should we not be able to hand every litigant in all but the lost complex cases a sealed order before they leave the courtroom?

But what of the future of the Bar, in particular the future of the Family Bar, in this almost unrecognisable new world? It is not for me to tell or even to advise you what to do. However, I would encourage you to embrace with enthusiasm new, and where appropriate different, working practices. Keep to the substance of your craft, but be prepared to jettison what is only form. Cleave to the essentials. If necessary, abandon the inessentials. Make the most of direct access. Make the most of the barrister's equivalent of what the solicitor knows as unbundled legal services. Consider the offer of guaranteed fixed fees. Embrace the opportunities for advocacy in the context of the ever-expanding range of Non Court Dispute Resolution services – arbitration in particular.

This is a time for courage but also for optimism. The civilised world has always needed lawyers. The civilised world has always needed and, I am sure, will always need advocates. We can see them in the writings of Pliny the Younger practising in the high days of the Roman Empire much as you do today. The men who built this great hall almost 450 years ago were optimists, looking forward confidently to the centuries ahead. Why should you, the women and men of today, be any less optimistic, any less confident?

These are troubled times for the law and for lawyers. The financial burdens on many of you are great, even as you are called upon more and more to work *pro bono* for those cast adrift by an uncaring State. Remember, however, that there is no greater calling than to help those in distress who cannot help themselves. It is you, the Bar, the Family Bar, who, in the final analysis, stand up for, defend and protect some of the weakest and most vulnerable in our society. It is a vital, a noble, task which, day in day out, I see played out in front of me in courts up and down the land. I watch and admire you, and all you do, with gratitude for what you do and with pride in the Bar of which I was once privileged to be a member. Our fellow citizens are lucky, as are more transient inhabitants of our country, to have available to them such dedication, such commitment, such determination, indeed, such passion. What you do, whether you are the most junior tenant or the grandest silk, really does make a difference to people's lives. I thank you all. Long may the Family Bar, long may the Family Law Bar Association, continue to flourish.