# When families fall apart, do they fall too easily into court?

## or 'Almost Anything but The Family Court'

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at The University of Worcester

The Rt Hon Sir Andrew McFarlane: President of the Family Division

The sub-title of this address is 'Almost anything but the Family Court'. Some years ago, businessman Gerald Ratner, who was then the chief executive of a prominent High Street jewellery business bearing his name, Ratners, came to grief when he publicly denigrated the merchandise he was selling in instantly memorable terms – and I suspect many here can remember his precise words. I digress, but on a recent visit to the newsagents I noticed that one popular fishing magazine is in fact called 'Total Carp'.

Be all that as it may, you are nevertheless entitled to wonder why I, as the President of the Family Division and Head of Family Justice, am suggesting, as I will be, that separating parents, who do not need the court's protection from abuse, should try almost anything before turning to the Family Court. I hope, during the next 30 minutes, to explain why this is so, but in doing so I will not in anyway be denigrating the Family Court or the admirable cohort of lawyers, social workers, court staff, judges and magistrates who work there. Far from it, they are individuals whom I regard with the most profound respect and gratitude.

My message is that, whilst it is obviously necessary for there to be access to a branch of the justice system in the event of an intractable dispute about children or family finances following a break-up, taking proceedings in the Family Court should be the option of last resort, rather than, as it is seen by many, the first port of call.

In contrast to the lectures or 'key note addresses' that I am often called on to give, which are aimed squarely at Family Law professionals, in giving this public lecture, at

the invitation of the High Sheriff for Worcestershire, Mr Andrew Manning-Cox, I will be speaking directly to the audience in this room mainly comprising of law students and legal professionals, some of whom are family lawyers, but many of whom are lawyers who do not normally come into contact with the Family Court. I also hope that, through the publication of this lecture, my message may become accessible to the public at large. As a result, you will be relieved to hear that the content is not unduly weighed down with detailed legal argument!

In setting the scene, and narrowing your focus on what the Family Court does do, it is necessary to identify what it does not do. There are one or two aspects of this, but the first overarching heading is 'parental rights'.

Parental Rights

The concept of parents having 'rights' over or with respect to their child was, at one time, at the centre of the law relating to children. I will, in a moment, offer you a short history lesson which I suspect you may find quite striking. But, as I will explain, the very idea, in law, of parental rights ended over 30 years ago with the advent of the Children Act 1989. It is, however, a concept that has proved hard to remove totally from the public mind and it is by no means rare for judges to hear or read of a parent or grandparent asserting that it is their 'right' to see, or have the care of their child or, for example, that there is a 'right' to have 50% of the child's time.

At the beginning of the 20th century the legal structure around the roles of a mother or father of a child was rigid, straightforward and, from the point of view of public administration, had the advantage of identifying only one parent of the two who had sole and complete legal authority with respect to a child. It was the father of a legitimate child who had the exclusive right to exercise parental authority over his son or daughter. Where a child was illegitimate, it was the mother who had sole parental authority. A divorced wife might acquire legal authority by court order, but in this context the grounds of divorce were relevant and where, for example, it was established that the wife had committed adultery, she would have no prospect of being granted parental authority over her child.

All this sounds so alien to our ears, but I am describing a situation that existed less than 100 years ago and in which the role of women had for centuries been either ignored or grossly undervalued by the law. For example, as is well known, it was not until 1928 that all women over 21 were given the vote at general elections.

Women were not the only family members to be undervalued or ignored as individuals within the law at that time. If a dispute over a child did come to court, for example following a divorce, the dispute would be resolved by the court awarding "custody" to one or other parent. The word "custody" has strong connotations of possession and control. I might place my valuable goods into the 'custody' of the bank manager; if I were a policeman I might arrest you and place you in custody. Custody is a process or an arrangement that happens to things or to people whose freedom of choice has been removed following arrest.

Where custody was ordered in favour of one parent, the court would normally award rights of "access" to the other. Again, the word "access" has strong physical connotations, I have a right of access across your land, or I wish to have access to the valuable goods that are in the custody of the bank.

Both custody and access tell you something about the person who holds the right of custody or the right to access, but little about the position of the child at the centre of any custody or access order. The words "custody" and "access" are devoid of emotional content; they speak in rigid physical terms and have little or nothing to do with the psychological and emotional relationship between a parent and a child.

Although the words "custody" and "access" disappeared from the statute book with the implementation of the Children Act 1989, it is still not uncommon now, 30 years later, to hear these very phrases used in television drama, media reporting and, even, political debate.

Moving on in the historical time-line it is hard to understate the importance of the Guardianship of Infants Act 1925. There had been a developing head of steam for reform of the "one parent automatically has sole authority" position. Change was resisted by government and civil servants partly because, to the administration, it was attractive to have a model where only one single parent had sole authority. A second ground for concern was that if parental authority were shared it would be inevitable that disputes between parents would be brought to court. Intervention by the courts in what was essentially private life was thought to be intrinsically undesirable and might introduce an element of discord between parents which could never be eradicated. Finally, there was a strong view that issues relating to children were not really justiciable at all. In a select committee report during the passage of the 1925 Act Sir Claud Schuster said

> "[courts are] concerned…with the definite ascertainment of the rights of the parties, a party on one side and a party on the other, and if they can ascertain what the right is then the court is inevitably led to its decision. There are no rights here. It is a question of discretion. To take a ridiculous instance, a dispute whether a child is to go to one school, or to another school – how on earth is the court going to deal with that?"

Those of us in this room who are Family lawyers, magistrates or judges will display a rueful smile at that observation recalling, as we all will do, the number of occasions when we have had to sit and listen to disputes on precisely that topic – and many which are far more trivial.

The resistance of Sir Claud and others was overcome and The Guardianship of Infants Act 1925 gave the court a wider and more flexible jurisdiction to attribute rights to a mother with respect to a legitimate child. The Act did not give the wife rights during the existence of a marriage, unless she obtained a court order, but, on divorce the court had power to determine issues between the parents and, for the first time, the Act of Parliament stated that the court was to have "the child's welfare as its first and paramount consideration". The court was expressly instructed not to take any account of whether the claim of the father was superior to the mother, or vice versa. As a

result of the 1925 Act the courts had a greatly increased role in determining issues regarding a child's upbringing. Initially the number of cases brought to court was low, but had risen to 6,000 or so by 1948.

The parents of an illegitimate child had to wait 34 more years for the Legitimacy Act 1959 to achieve similar access to a court with respect to their child.

The next step in the journey to 1989 was the Guardianship of Minors Act 1973 which gave authority to both parents to act together, or autonomously, and the rights and authority of a mother and father were equal. Under the Guardianship of Minors Act 1973 the court was given jurisdiction to determine any issue as between the parents whether or not there was a subsisting marriage.

I have, thus far, described the development of a jurisdiction for the courts to determine issues between parents which developed in order to resolve disputes if they occurred. Separately, and for different reasons, a more paternalistic approach developed during the middle of the 20th century and blossomed during the deliberations of the Royal Commission on Marriage and Divorce in 1956 (the Morton Commission). The Morton Commission took a strong view that divorcing parents could not be relied upon to establish arrangements that were necessarily in the best interests of the children. As a result they recommended that responsibility be placed on the court to scrutinise the arrangements for the child in every divorce case, whether or not the parents were actually in dispute with each other. The Matrimonial Proceedings (Children) Act 1958 was passed to enshrine the court's role as paternalistic overseer with <u>every</u> divorcing couple being required to file a "statement of arrangements" for their child, which required approval by the court, before the divorce could be granted. Even when the Special Procedure for divorce made the process of dissolution of a marriage far more straightforward, the need to file a statement of arrangements and to attend an appointment about those arrangements before a judge, continued.

This process can only have led to many more court orders, and many more disputes between parents, than had hitherto been the case. It also, in my view, must have

added real substance to what must have been a growing understanding in the population at large to the effect that 'if there is a dispute about our children we have to go to a judge to sort it out'. If that was the consequence, and I am sure it must have been, one does not need to think for long to guess what Sir Charles Schuster's reaction would have been had he lived long enough to observe it.

The requirement in every divorce case for the parents physically to attend before a judge who would audit the arrangements for their children was, to my mind, as a matter of principle, highly questionable, if not downright wrong. This 'Nanny knows best' approach in any event became very draining on the resources of the court and in many cases was little more than a largely symbolic application of the judicial rubber stamp. But it only finally came to an end in 2014 when the Matrimonial Causes Act 1973, s 41 was repealed.

## Children Act 1989

By common accord, the Children Act 1989 was a most welcome piece of legislation whose worth has been proved time and time again over the past 30 years. Whilst its detailed terms have in parts been amended, the broad principles and structure remain as they were enacted and are widely seen as being sound and likely to endure.

For the purposes of this address, which focuses upon the resolution of disputes between parents as to the arrangements for their children, I propose to highlight three separate aspects of the Children Act which are of particular relevance:

a) The concept of "parental responsibility";
b) "Child arrangements orders"; and
c) The no order principle.

## "Parental responsibility"

Before dipping below the 'parental responsibility' label, I wish to lay the greatest stress upon the words "parental responsibility" themselves. They are a far cry from the overtones and undertones generated by a word such as "custody", or its second division

counterpart "access". Although "parental responsibility" includes parental "rights", the emphasis of this concept is upon "responsibility" rather than "rights".

Interestingly, and I would say wisely, the 1989 Act does not attempt a jot and tittle definition of what is meant by "parental responsibility". Section 3 of the Act, under the heading "*Meaning of parental responsibility*" states that "parental responsibility means all the rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to the child and his property".

Baroness Hale, who was the principal architect of the Children Act 1989, has described the policy that underpins the concept of "parental responsibility":

> "the [Act] assumes that bringing up children is the responsibility of their parents and that the State's principal role is to help rather than to interfere. To emphasise the practical reality that bringing up children is a serious responsibility, rather than a matter of legal rights, the conceptual building block used throughout the [Act] is "parental responsibility". This covers the whole bundle of duties towards the child, with their concomitant powers and authority over him, together with some procedural rights for protection, against interference…it therefore represents the fundamental status of parents". [1]

This address is not intended to be comprehensive law lecture on the private law provisions of the 1989 Act. Suffice it to say that in every case a child's mother has parental responsibility and in most normal circumstances so will the father.

A point I would stress is that where two people share parental responsibility each has an entirely equal and equivalent status with the other. In terms of status there is nothing to choose between them and instead of it being 50/50, it should be seen as a 100/100% split.

[1] "The Children Bill: the Aim" [1989] Fam Law 217

During my time in the Court of Appeal, I have referred to such matters in the course of a number of judgments. In the case of *Re: W (Direct Contact)*[2] we allowed an appeal from a father who had been denied contact with his two young children by the children's mother for no apparent reason other than her refusal to engage in the process. Under the heading "Shared parental responsibility" at paragraphs 45 to 48 of my judgment I stressed that:

> "The CA 1989 does not place the primary responsibility of bringing up children upon judges, magistrates, CAFCASS officers or courts; the responsibility is placed upon the child's parents."

I stressed that there was benefit in stepping back from a focus on the court's role in resolving disputes, to seeing the function of the court in the wider statutory setting within which the primary responsibility for determining the welfare of a child, and then delivering what that child needs, is placed upon both his parents and, importantly, is shared by them. When considering the definition of "parental responsibility" I suggested that:

> "it must be the case that where two parents share parental responsibility, it will be the duty of one parent to ensure that the rights of the other parent are respected, and vice versa, for the benefit of the child."

In a postscript to the judgment, at paragraph 72 onwards, I once again, stressed that, along with the rights, powers and authority of a parent, come duties and responsibilities. At paragraph 75 I spelt out what that meant by saying:

> "In all aspects of life, whilst some duties and responsibilities may be a pleasure to discharge, others may well be unwelcome and a burden. Whilst parenting in many respects brings joy, even in families where life is comparatively harmonious, the responsibility of being a parent can be tough. Where parents separate, the burden for each and every member of the family group can be,

[2] [2012] EWCA civ 999; [2013] 1 FLR 494

and probably will be, heavy. It is not easy, indeed it is tough, to be a single parent with the care of a child. Equally, it is tough to be the parent of a child for whom you no longer have the day-to-day care and with whom you no longer enjoy the ordinary stuff of everyday life because you only spend limited time with your child. Where all contact between a parent and a child is prevented, the burden on that parent will be of the highest order. Equally, for the parent who has the primary care of a child, to send that child off to spend time with the other parent may, in some cases, be itself a significant burden; it may, to use modern parlance, be "a very big ask". Where, however, it is plainly in the best interests of a child to spend time with the other parent then, tough or not, part of the responsibility of the parent with care must be the duty and responsibility to deliver what the child needs, hard though that may be."

Where it is established that it is in the best interests of a child to have a meaningful relationship with both parents:

"the courts are entitled to look to each parent to use their best endeavours to deliver what that child needs, hard or burdensome or downright tough though that may be. The statute places the primary responsibility for delivering a good outcome for a child upon each of his or her parents, rather than upon the courts or some other agency."

I concluded, at paragraph 78 with these words:

"Parents, both those who have primary care and those who seek to spend time with their child, have a responsibility to do their best to meet their child's needs in relation to the provision of contact, just as they do in every other regard. It is not, at face value, acceptable for a parent to shirk that responsibility and simply to say 'no' to reasonable strategies designed to improve the situation in this regard."

Having sat through many legal lectures given by judges who quote their own judgments, I know what you are all secretly thinking at this very moment. I plainly like the sound of my own voice and the form of my own words! I hesitated for some time before including those quotations, but have done so because they are at the very core of my thinking on this important topic.

Drawing matters together under the heading of Parental Responsibility it may be that many of our fellow citizens have failed to grasp the importance and the utility of the concept of parental responsibility that was introduced to our law by the Children Act 1989. That failure to grasp that it is the responsibility of each parent to sort out the arrangements for their child is at the heart of this first, and major, public misunderstanding that leads too many parents to turn to the court.

## Inter-parental status

The second misunderstanding, which I can take much more swiftly, relates to status.

When first enacted, the Children Act established two basic categories of order for determining the ordinary care arrangements for a child; they were 'residence' and 'contact' orders.

Despite the good intentions of the drafters of the legislation, it is regrettably the case that, over time, the labels "residence" and "contact" became free-standing matters of parental status, one first class and the other second class. The perceived status of a residence order therefore became yet another factor that disputing parents came to court to fight about.

In a further attempt to neutralise the difference between the status of each parent, these terms were jettisoned in 2014 in favour of a single global 'child arrangements order'. It was, however, necessary to make a distinction between a child arrangements order providing that a child is to 'live with' one or both of her parents, and an order simply for the child to spend time with a parent. Thus the competition for status still has something to engage upon even in this new formulation. In a system which has the

welfare of the child at its core, an arid dispute simply about the respective status of the two adults has little place.

## No order principle

The third and final misconception that I would draw attention to is a belief that the court has to make a court order.

In keeping with the general policy behind the Children Act 1989, section 1(5) provided that a court shall not make any order under the Act "unless it considers that doing so would be better for the child than making no order at all". The "no order principle" is entirely compatible with Article 8 of the ECHR which provides that any intervention by the state, in this case the court, in the private or family lives of individuals should only occur as a matter of necessity.

I do not wish to dwell on this point unduly, but, when looking back at the historical context that I have described, the no order principle, shortly stated though it is, represented a powerful indicator that the old days of judicial paternalism were well and truly over. The no order principle is well known to family lawyers and judges and has, over the ensuing 31 years, become part of our professional DNA. However, at a time where now legal aid has been removed entirely from this area of the law and the courts are encountering the majority of cases where neither party is represented by a lawyer, there is a need for this principle to be re-stated and, indeed, to become part of the DNA of the wider public at large. My fear is that the older conception of needing to come to a judge as the first port of call, where there is a dispute as to the upbringing of a child, continues to hold sway in the minds of many.

So much for false understandings over what the court will do. What is the approach of the Family Court when a case does come before it?

## The approach of the Family Court: child's welfare paramount

It follows from what I have already said, that, where parents come before a Family judge or magistrate to settle the arrangements for their child's future care, the court does not start with a default position in favour of one or the other based upon any pre-existing 'right' for that parent to have the child in their care, or even to see the child. Neither is there anything set down in law to say that a mother will always have the care of a very young child, or that there should be a 50/50 split of time, or whatever the pre-conception may be.

Each case is determined on its own merits with the court applying a single test by affording paramount consideration to the welfare of the child. 'Paramount' meaning above all others and 'welfare' meaning an holistic overview of a child's needs during her or his childhood. The court is required to look at the range of factors that normally impact upon the welfare of a child, which are expressly listed in a 'welfare checklist' in the Act, and the court must, in most normal cases, presume that it is in the child's interests for each parent to have involvement in their lives.

The Family Court Process

Issuing an application in the Family Court for an order concerning the future care arrangements for your child should not be undertaken lightly. The application will cause both parents, and any other family members who may be drawn in, to embark upon a process which may, unfortunately, last for a year or more unless an earlier resolution can be achieved by agreement. The Family Court in England and Wales currently has over 80,000 cases of this nature outstanding. The backlog in each of the 42 court centres that deal with these cases is significant and unwelcome delays are inevitable. On average it is currently taking some 44 weeks to resolve a private law children application. In contrast to other forms of litigation, where the issues and the evidence will largely be the same whenever the case is heard, a Family Court case is dynamic in the sense that the children's and parents' lives carry on in the meantime and, put simply, 'fresh stuff happens' between court hearings. The court will not infrequently have to receive evidence about fresh events and the need for further investigation often necessitates a further adjournment.

Why do Family Court cases take so long to resolve? The answer, put simply, is that if a couple do turn to the Justice system for the resolution of their differences, the system will provide a justice and rules based process which will ultimately lead to the imposition of an outcome determined by a judge or magistrates. This necessarily takes time. After an initial period during which the applicant for an order is expected to meet a mediator and investigate alternative means of resolution, unless an exemption applies, the court will first engage with the couple at a First Hearing Dispute Resolution Appointment ['FHDRA']. This will typically be a month or two after the initial application and after a preliminary social work investigation has established whether there are any safeguarding issues of which the court should be aware.

At the FHDRA, the judge or magistrates will investigate the scope and scale of the dispute and see if it is possible to resolve some or all of the issues. If not, the case will be adjourned so that each parent can file evidence with the court setting out the matters that they will rely upon in support of their competing claims. Legal aid is no longer available for these private law cases, unless a party alleges domestic abuse, and it is frequently the case that both parents will be appearing as litigants in person, without a lawyer, before the court. The pressure of being a litigant in person in such emotionally charged proceedings is not to be under estimated.

After the FHDRA the case is likely to be adjourned for some months to await a slot in the list when the court can devote one or more days to hearing evidence and determining the issues. This process itself may be split between a hearing that makes findings of fact as to what has gone on in the past, and a later hearing, informed by a social work investigation and recommendations, to determine the best outcome to meet the child's welfare needs.

To be a child who is the subject of disputed court proceedings is not a happy experience. Indeed, it is potentially harmful and can lead to long-term adverse emotional and relational damage. In the same way, it is not a positive or beneficial experience for parents to be locked in a contest with each other before a court for a period of a year or so. Because the Family Court is dealing with the rearrangement of human

relationships, and the human beings involved plainly have to go on living in those relationships once the court case has finished, the adversarial nature of the court process is unlikely to have a healing impact on the participants.

The potential for a child to be harmed by parental conflict was neatly summarised in the excellent report called 'What about me?' published last year by the Family Solutions Group, which had been established at my request[3]. They said:

> 'It is critical to recognise that children are at risk of harm when parents separate. Family breakdown is a time of great vulnerability and research has consistently shown that unresolved parental conflict is harmful to children. Destructive inter-parental conflict affects children of all ages, across infancy, childhood, adolescence, and even adulthood. The way in which parents communicate with each other impacts children's long-term mental health and future life chances.'

There has got to be a better way for separated parents to be supported and enabled to resolve disputes about the future care of their child without embarking on court proceedings. I laid out longer term proposals for a better way in a speech made in Jersey a year ago[4], but rather than waiting for fresh resources or government intervention, there is much that a parent in this situation can do for themselves to avoid going to court. To turn at last and very briefly to the title of this address, it is my very firm view that far too many families simply turn to the court rather than seek less harmful, swifter, cheaper and potentially more enduring ways of resolving their disputes. I should stress that these will be cases where there are no issues of domestic abuse or child protection. I am speaking about disputes about the care arrangements for a child in ordinary circumstances where, as my theme so far has suggested, it is for the parents each to take responsibility for respecting and meeting the need for their child to have an ordinary relationship with the other parent, despite the falling out between them as adults.

[3] https://www.judiciary.uk/wp-content/uploads/2020/11/FamilySolutionsGroupReport_WhatAboutMe_12November2020.pdf-final.pdf
[4] https://www.judiciary.uk/wp-content/uploads/2021/10/Supporting-Families-in-Conflict-Jersey.pdf

How should they do this?

How to avoid the Family Court

I should have confessed much earlier that I have shamelessly lifted the sub-title for this address from a recently published book of the same name '(Almost) Anything But Family Court'[5]. The author is solicitor and mediator, Jo O'Sullivan and it is published by an admirable support group - 'Only Mums and Dads'.

In the Foreword to this book I said:

> 'Having practiced as a lawyer, and now sat as a judge, in the family courts for over 40 years, I can tell you that there no 'winners' (other than possibly the lawyers) at the end of family proceedings. To end up 'fighting' a case in the Family Court is a sign of failure and, as this book describes, often a cause for true loss in terms of emotional and mental well being, and money. Conversely, those who are able to have a 'good' divorce or separation, where they can each feel that a fair outcome has been achieved without undue acrimony, will have gained something of long-term value for themselves and their children. This book is a detailed roadmap towards that positive goal.'

In the course of her narrative, Jo O'Sullivan identifies 12 'options for avoiding the Family Court'. I will take each in turn and offer a short description:

1. DIY or Kitchen Table Agreements: here the label says it all. Many couples are able to sort out untangling their arrangements and responsibilities by talking matters through and without the intervention of any professionals or court orders. There are now a good number of self help resources online or in print and, for those that can, an amicable settlement is worth not only the legal fees that it may save, but is also valuable for the comparative absence of bile and ill-will. A true agreement to which both parties have signed up is also likely to endure.

[5] Bath Publishing for 'Only Mums & Dads' (2022).

2. **Mediation:** Mediation is the most prominent form of professionally led non-court dispute resolution. A mediator does not judge the couple, or impose his or her own view onto them. Instead, the mediator leads the parties through a structured conversation with each other with the aim of achieving an agreed outcome. The mediator will charge a fee, but Legal Aid is available, subject to a means test and, at the present time, the Ministry of Justice is also providing funding through vouchers worth £500 per couple.

3. **Hybrid or lawyer assisted mediation:** Where one or both of the couple have their own lawyer(s), the lawyers may be present for all or part of the mediation or otherwise be involved in the process. Just because a party has a lawyer does not rule out mediation.

4. **Child inclusive mediation:** where both parents and the child agree, a mediator may meet the child separately to discern the child's wishes and feelings for the future. The mediator will discuss with the child what, if anything, is fed back to the parents. The child will not be asked to decide the issue themselves.

5. **Collaborative Law:** Many family law solicitors are specially trained to act in a collaborative manner, rather than in the traditional combative manner. The lawyers for each party work together to help a couple to sort things out; they do not work against each other or try to 'win'.

6. **Round Table:** Where both parties have lawyers, who are acting in the more conventional manner, it may often be advantageous for there to be a meeting (round a table or online) to investigate options for settlement.

7. **Arbitration:** Arbitration is, in effect, private litigation where an appointed arbitrator, rather than a judge provided by the state, is contracted to hear about and then decide the issues. Both parties have to agree to be bound by the arbitrator's decision. There are advantages over using the Family Court in that the parties and their lawyers choose the arbitrator, book suitable premises for

the hearing and do so on a date and time that suits them, rather than waiting for the court office to find a hearing date in the list before an unknown judge. Whilst arbitration is more readily suited to resolving financial issues, it is now being more widely used for determining disputes around a child's welfare.

8. **Arbitration/Mediation:** Here an arbitrator may direct that the parties engage in mediation, but return to the arbitrator in the event that issues remain unresolved.

9. **Online:** there are now some online services who will assist in completion of court forms and other steps in the process.

10. **One couple, one lawyer:** as a result of the amendments made by the Divorce, Dissolution and Separation Act 2020, which allowed couples to make a joint application to end their formal relationship by divorce or partnership dissolution, there is now a market for legal advice to be given on the 'one lawyer, two clients' (or 'one couple, one lawyer') model. 'The Divorce Surgery', an early entrant into this field[6], is an arms length agency run by two members of the Family Bar. For a fixed fee, which varies depending upon the type and complexity of the issues, the Surgery will appoint a barrister to meet with the two parties, absorb the relevant detail from each about their circumstances, and then deliver advice as to the likely outcome if the contested issues were to litigated before a court. The model is applied to issues relating to both finance and children. Resolution, which is the umbrella organisation for Family Law Solicitors, has now launched it's own one lawyer-one couple scheme ['Resolution Together'] meaning that this option should now be much more widely available throughout the country.

11. **Early neutral evaluation:** this is very similar to 'one couple/one lawyer', but is likely to be an option used where each party already has their own lawyer. A respected expert lawyer is chosen by the lawyers to look at the issues in the case

[6] https://www.thedivorcesurgery.co.uk/

and provide an early indication of the likely outcome if the issues were to come to court.

12. **Private Financial Dispute Resolution Judge:** This is a further variation on early neutral evaluation that is used in financial disputes, where a privately instructed senior lawyer, or retired judge, conducts a more formal process by which the case for each side is challenged by the judge before she or he gives an opinion as to the likely outcome at court.

In addition to the dozen of options described by Jo O'Sullivan in her book, other resources exist to support couples during the process of separation. These include online advice sites, targeted support groups such as 'Rights of Women', 'Families need Fathers' or 'Dads Unlimited', or more neutrally focussed groups such as 'Only Mums and Dads'. Professional separation counsellors or advisers are another option. Attendance at a Separating Parent's Information Programme ['SPIP'] has proved to be beneficial to many parents. In much the same way as a Speed Awareness Course, a SPIP aims to raise a parent's awareness of the impact of their separation on their children, and offer general advice as to how this may be reduced. Each parent attends, with other parents, at a different time to their former partner.

One resource that I would commend is provided by the Family Justice Young Peoples Board, a group of some 80 young people who have been the subject of Family Court proceedings. Their 'Top Tips for Parents who are Separated' contain some 20 strong messages[7] such as:

"• Remember I have the right to see both of my parents as long as it is safe for me.

• I can have a relationship with the partner of my other parent without this changing my love for you.

• Try to have good communication with my other parent because it will help me. Speak to them nicely."

Those are simply the first three, the other 17 are similarly clear and sound.

[7] file:///C:/Users/PresidentofFD/Downloads/Top-Tips-for-parents-who-are-separated.pdf

All of these options can neatly be encapsulated in a phrase that I have picked up from Australia, from where you can find a suitably straight-talking video under the title: 'You can separate smarter'.[8]

Those who have heard me before, or read my recent speeches on this topic[9], will know that I am very keen for there to be much greater provision of resources to support separating parents to resolve issues without coming to the Family Court. There is, however, no need to wait for any change. I hope that what I have described during this address has more than demonstrated that there are many different options that are already in place to assist parents to sort any issues out in a much less acrimonious setting, and more swiftly, than coming before a judge or magistrate in court proceedings.

The Rt Hon Sir Andrew McFarlane
President of the Family Division
28 October 2022

[8] https://www.youtube.com/watch?v=eZcG3vcEeGw
[9] https://www.judiciary.uk/speech-by-the-president-of-the-family-division-supporting-families-in-conflict-there-is-a-better-way/;
https://www.judiciary.uk/speech-by-the-president-of-the-family-division-relaunching-family-mediation/