

## New Approaches to Children's Interests in Legal Proceedings

The Hon. Mr. Justice John Gillen, Head of Family Law, Northern Ireland<sup>1</sup>

"The search for truth can never stop. It cannot be adjourned, it cannot be postponed. It has to be faced, there, on the spot". – Harold Pinter.

1.1 There is generally universal accord as to the outcomes that we all seek in the family justice system (FJS) for families and children, namely that they should be healthy, stay safe, achieve, make a positive contribution and achieve economic well-being. Increasingly there is similar recognition that this can only be achieved in a multi-disciplinary context when agencies and courts work together to design and deliver integrated services around the needs of children and families. There is an imperative to address the underlying problems of families – both victims and perpetrators in that family – using the court process, only when necessary and to best effect in an holistic fashion. In turn this should provide a window of opportunity to link individuals to the types of services and interventions that make a difference to their lives through the medium of the symbolic – and if when required the coercive - authority of the courts.

1.2 Lord Justice Thorpe recently said:

"The delivery of a high quality service to all those who entered the family justice system, whether as applicants or as respondents, must depend on informed collaboration. No one contributor can contribute more than his own best effort. But that best effort can be swiftly nullified by the shortcomings of anyone of the many other crucial contributors to outcome. Whilst this applies equally to all our systems of justice it is more acutely true of the family justice system where the judge holds an inquisitorial duty and where the diversity of other professional contributions is so extensive."<sup>2</sup>

1.3 But that such a multi-disciplinary concept is wont to challenge longstanding practices and cut across long established professional and organisational boundaries, is clear for all to see. In certain areas Government in the United Kingdom is already rising to the challenge. For example the new duties in Section 10 of the Children Act 2004 in England and Wales now

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<sup>1</sup> Paper given at the *Achieving Rights Based Child Law* Conference on 14 October 2006, Dublin, sponsored by the Human Rights Commission and Law Society of Ireland.

<sup>2</sup> Promoting Inter-Agency Working in the Family Justice System – A Consultation Paper March 2002 at page 4.

places a statutory obligation on local authorities and their "relevant partners" to co-operate to improve the wellbeing of children. Local authorities are now statutorily bound to take a lead in making arrangements to promote co-operation between local agencies whose work impacts on children within the authorities area.<sup>3</sup> In Northern Ireland, Children's Minister Maria Eagle, currently heads up an inter-governmental working party which is endeavouring to cut through pigeon holing of Government departments when dealing with issues involving children.

1.4 The theme of this address is that courts must adopt a more holistic joined up approach incorporating a more harmonised family justice grouping which will incorporate public law, private law, aspects of youth justice and domestic violence all within a new family court setting. The moment has now arrived when we must seriously question whether single jurisdiction courts in the FJS work effectively or fairly in the best interests of families and children. I am concerned lest the court system has been prescriptively reactive and inadequately pro-active in seeking justice for children and families. Has the system failed, if indeed it ever held the potential, to sufficiently address the underlying causes of family dysfunction and breakdown? Has it failed to use appropriate screening assessments, diversion opportunities and case management tools to engender and develop a culture of problem solving wherein we safeguard and promote the weak and vulnerable and counteract offending behaviour? Jurisdictional boundaries within the court system require to be rigorously scrutinised to ensure they serve the interest of families rather than merely following outmoded traditions. The identification of needs and resources, the creation of integrated planning coupled with a joint commissioning of services from a range of providers, all working with shared budgets, must become the hallmark not only of governmental approach<sup>4</sup> but also of the court system.

1.5 Children who are abused and neglected in dysfunctional families and who are often within the looked after system are amongst the most disadvantaged in our community. They have greater mental health and educational needs, a greater propensity to have conduct disorders and to transgress the law and have more exposure to domestic violence with an increasing loss of contact with parents than those of the general population of the same age.<sup>5</sup>

1.6 The court system, in partnership with those responsible for Children's Services must begin to address these needs with a genuine outcome led approach. It must take all steps at its disposal to narrow the gap between these disadvantaged children and their peers if we are to provide equality of

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<sup>3</sup> "Every Child Matters. Statutory Guidance on Inter-Agency Co-operation to Improve the Wellbeing of Children". Children's Trusts 2005: HM Government.

<sup>4</sup> Ibid – paragraph 1.11.

<sup>5</sup> "Young People in Regional Care Centres". Youth Justice

opportunity and eliminate discrimination. It is my firm belief that improved outcomes are likely to be delivered only if courts and agencies work together and focus on the family and children as a whole. Integrated court processes, integrated agency services and an integrated family strategy led by the concept of one judge one family to ensure continuity and consistency is the key to the future. Specialist trained judges and magistrates working with specialist trained professionals within an informed and coordinated system and all co-operating together to secure the best outcome for those who are the unfortunate casualties of domestic or communal upheaval<sup>6</sup> must be the clarion call.

1.7 Such an holistic family court needs to be based on a robust and transparent inter-jurisdictional and inter-agency culture of information sharing and integrated planning pooling resources and budgets where appropriate. This alone can drive the changes that are necessary to ensure that the public have confidence in the arena and will be anxious to participate. If children and parents believe – and seeing is believing – that judges and courts will listen, hear and understand their problems, justice is immensely strengthened.

1.8 Along the way there is doubtless the need to preserve some measure of distinction between concepts of care in the Family Justice Courts and criminal proceedings in the Juvenile Courts. Since the 1990s in the United Kingdom it has been a major legislative aim of Government to maintain this distinction. The Children Order (Northern Ireland) 1995 was a model for the separation of welfare and justice. It places an obligation on each Health and Social Services Trust to take steps to reduce the need to bring criminal proceedings against children. Nonetheless there is growing concern that too many children are being prosecuted and that insufficient recognition is accorded to the notion that children can be simultaneously both perpetrators and victims. By focusing on the family as a whole within a Family Justice Court, many such children who are currently dealt with within the juvenile justice system could be dealt with by the care system within a family context. The approach that I therefore recommends is the establishment of a single entry point for both private and public cases at Family Proceedings Court level for all aspects of family justice and that thereafter appropriate transfers to other levels in the Care Centre or the High Court can be considered depending on complexity or size. Perhaps in order to prevent a silting up of the system all cases should be initially screened by a Children's Panel with a co-ordinator to establish whether the weight of the issues are more connected with juvenile justice or welfare needs. In consultation with inter-agency fora and the Public Prosecution Service the decision will be made as to whether the matter is dealt with by mediation, advice/caution, Restorative/Family Group Conference or by court hearing.

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<sup>6</sup> "Towards a Unified Family Service". DJ Jeremy Rawlins NLJ. 28 October at page 639.

1.9 That need to focus on the family as a whole within a family court is a fundamental ingredient of my conviction that domestic violence courts should be introduced in Northern Ireland and elsewhere as an integral part of a co-ordinated family justice system. The 1990s has seen a change in the criminal justice response to domestic violence. The obligation to improve victim safety and enhance defendant accountability has recognised the unique needs and concerns of those who suffer domestic violence. It has led to creative and innovative changes in a number of jurisdictions throughout the globe. The gathering momentum of realisation that children are profoundly affected and often irreparably damaged by domestic violence has been a vital ingredient in propelling domestic violence courts to the fore in that global context. I am absolutely satisfied that the introduction of specialist domestic violence courts into Northern Ireland as part of a family justice court is not only merited but wholly overdue. Crucially however it must be part of a system where the concept of one judge and one family exists with a single judge wherever possible overseeing not only the violent side of the domestic setting, but at the same time dealing with such interconnected matters such as orders of protection, residence, contact with children, divorce, juvenile offences and finance. The aim is to simplify the court process for families in distress, creating an environment where litigants no longer have to navigate multiple court systems simultaneously and thereby reduce the risk of delayed disconnected and conflicting orders. Naturally such courts must be suitably resourced providing ready access to support from outside agencies such as health and social services and voluntary agencies, counselling, housing, diversion from offending, restorative justice, job training and victim safety if they are to be truly problem solving fora. For this reason, in the first instance, all cases will be considered in relation to threshold criteria that tests whether there has been sufficient engagement voluntarily or through contract, using such means as mediation or Family Group Conferencing to ensure that a plan is both owned and is sustainable.

1.10 This concept of courts dealing with unique circumstances such as domestic violence could with time be extended to include the justice system setting up specific drug and mental health courts. The remit of that development is outside the scope of this address but the success of domestic violence courts would inevitably lead to the justice system in general addressing such issues which have been so conspicuously successful in jurisdictions such as the United States. I strongly endorse close consideration being given to the notion of a multi-jurisdictional community court geared to solving particular neighbourhood problems such as drugs, crime, domestic violence and housing problems which under normal circumstances in the current system are determined in four different venues. The idea of a community court has been highly successful in the USA and is making headway already in north Liverpool and Salford in Great Britain. The philosophy of a co-ordinated rather than a piecemeal approach to people's

problems has a resonance with the integrated concept of a Family Justice Court.

1.11 Diverting children and families from court through problem solving approaches and the integration of courts and court services makes financial sense. Last year domestic violence cost the United Kingdom £23 billion. It must be tackled in an orchestrated manner that first supports the integrity and coping skills of the family and when necessary adjudicates the more testing cases in a family oriented court setting. It is essential that scarce funds and budgetary constraints are not wasted on needless referrals and duplication of court resources in revisiting the same problem in different venues. One of the jewels of an integrated Family Justice Court is that resources are centralised in a continuum where problems are viewed holistically with the one judge and one family system looking at the family from all its disparate angles.

1.12 In summarising the objective of the concept of a new widely embracing Family Justice Court, I have therefore not lost sight of the fundamental truth that, wherever possible, the court process should be the last resort and much higher priority should be afforded to a system of prevention and early intervention embracing family and parenting support. Mediation, dispute resolution with a child centred focus coupled with diversion and early intervention schemes in youth justice must be prioritised before the court system is invoked. Underpinning the approach that I wish to adopt is the importance of promoting healthy family relationships, preventing conflict, encouraging agreement rather than litigation and promoting the right of children to have meaningful relationships with both parents and to live at peace without hindering or damaging either persons or property. Dispute resolution outside the courts should be a pivotal part of the family justice and welfare systems. By careful gate keeping as a permanent ingredient of the system, we will prevent the courts becoming overloaded or too expensive and unwieldy. Parental responsibility, partnership and participation are already key elements of our statute law. It is only if found wanting, that there should be recourse to the determination of the court.

1.13 Family circumstances in Northern Ireland and I am sure here in the Republic of Ireland are unique. Familial trends and behaviour patterns are all too often rooted in our recent history of conflict. Solutions that may be applicable in Glasgow, Birmingham, Croydon or Dublin may not meet the thrust of our problems. Each conflict situation is unique and the measures required to address the sequelae will reflect the particular circumstances. The present period is one of transition with significant and hopefully permanent reduction in political and other forms of violence. Nonetheless the ghosts of the past still haunt families and children. Few other children in the world will have been exposed to similar trauma where naming and shaming, beatings, shootings, explosions, paramilitary and gangster dominated home

communities, house arrests, military presence and exiling were all endemic in the lives of many of our children. Trans generation trauma undoubtedly has affected every part of their lives including education, mental health and social participation<sup>7</sup>. Unique circumstances demand a unique response.

1.13a In a post-conflict situation the pattern of risk behaviour and fragmented relationships, both at a family level and in communities, is more likely to emerge. We are already in the process of addressing our particular situation in Northern Ireland. The Strategies for Children by OFMDFM and DHSSPS will require us to meet certain goals, some of which are universal and some are necessarily more targeted. It is the intention that all of these goals will be underpinned by a commitment to children's rights principles and that the outcomes, building on the concepts of Every Child Matters, will also explicitly reflect this commitment through the inclusion of an outcome statement directed at the delivery of equality and rights for children and young people. There is a similar approach to the Children's Services Planning process integrating both the needs and rights of children and young people into desired outcomes for their futures.

No one will underestimate, despite the fact that we live in a small community of only 1.6m people, that it will be a challenge in such a small setting to create a more cohesive society. But one of the incremental steps which should not be so difficult with such a limited number of courts would be to set up the necessary corridors between courts to establish a family justice umbrella, achieving wherever possible the object of one judge one family. It is my firm belief that such a system should be immediately created in Belfast as a preliminary step as a pilot scheme prior to the widespread introduction of this system throughout our Family Care Centres and Family Proceedings Courts.

1.14 Such proposals are neither radical nor unheralded. The movement for a single Family Court has been growing in England and Wales during the time our deliberations. Proposals for simpler and more accessible court structures, leading to more efficient and effective civil justice were published in October 2005 by the Department for Constitutional Affairs (DCA) following a consultation paper "A Single Civil Court" published in February 2005. The proposals are intended to lead to:-

(a) A single civil court and a single family court to encompass all the jurisdictions currently shared between the High Court, County Courts and Family Proceedings Courts (FPCs).

(b) Greater flexibility for senior judiciary to ensure cases are allocated more easily to the most appropriate judge.

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<sup>7</sup> Phil Scraton: ECLN Essays No. 14: The Denial of Children's Rights and Liberties in the UK and the North of Ireland.

(c) Fewer potential obstacles for court users entering the court system because restrictions on where different types of cases have to be issued would largely disappear.

1.15 Ministers in the United Kingdom have concluded that reform to create single civil and family courts with unified jurisdictions would be beneficial and feasible and have decided to adopt that as a long term objective. It is recognised that establishing unified courts would require primary legislation so the objective must form part of a wider strategy. However it is my view that pending this there is considerable scope under existing powers to reform the system in ways that would further the objectives of unification eg. by removing/varying jurisdictional or procedural barriers that reduce flexibility to match cases to the most appropriate level of judiciary. In England and Wales a public consultation paper published in October 2005 (Focusing Judicial Resources Appropriately) gave details of such proposals. Similar proposals could be introduced in Northern Ireland.

## PROBLEMS TO BE SOLVED

2.1 There is inadequate emphasis on conflict resolution and prevention within the family justice system. There must be a cultural change led by Government at a regional strategic policy level to promote outside the court system a need to focus on children and agree on parenting arrangements before going to court with the benefit of appropriate help and assistance. This cultural change approach must also embrace children in the youth justice system where more early intervention particularly with looked after children can avoid the spiralling resort to the criminal courts.

2.2 At present issues concerning children and families arise in several different venues and are dealt with by several different magistrates and judges without any effective corridor, connection or sharing of information. Domestic violence, which clearly has profound effects on children, may arise in the adult court in the course of a criminal assault charge, by way of application for ex parte non-molestation orders in the domestic proceedings court, in the course of public or private law proceedings in the family proceedings court or in the course of divorce proceedings in the County Court or High Court. Each court may be blissfully unaware of the findings of the other with not only a lack of co-ordination but a potential for conflicting approaches. The domestic proceedings courts will deal with financial arrangements but not the re-distribution of capital assets which will involve ancillary relief proceedings in the High Court. Issues of residence and contact may arise in the domestic proceedings court if arrangements are agreed but more often in the Family Proceedings Court with the potential for complex cases to be elevated to a higher court. Aspects of all these matters can also arise in the youth court where once again the matter is dealt with by and large in abstract. Here young persons often appear without parental support or interest reflecting dysfunctional home circumstances without any co-ordinated approach being adopted to the overall root cause of family dysfunction. It seems that the concept of "joined up thinking" is foreign to our disparate approach. Problem solving does not seem to be the aim. There is an inadequate emphasis on the educational and mental health problems of children which almost always arise out of their family setting. This is coupled with inadequate interaction between agencies, where despite the efforts and achievements of the Children Matter Task Force, are still struggling with continuing concerns within the care system.

2.3 There is a school of thought that the abolition of doli incapax and the imposition of a criminal age of responsibility of ten in the United Kingdom has heralded a move towards drawing younger children into contact with the youth justice system and escalating them up the sentencing ladder and into custody. Although many children and their parents respond positively to "advice and warning" or "cautions" and avail of referral to diversion projects, children in trouble are also children in need and more early intervention is



needed. There is no shortage of research linking criminal behaviour of young people with poverty, fractured families, problems in schooling and learning and behavioural difficulties. Children in care are over represented in the figures of children in custody in Northern Ireland. Whilst the Criminal Justice (Children) (NI) Order 1998 aims to reduce the number of children in custody with a corresponding emphasis on diversion, nonetheless the feeling is abroad that when it comes to the time for release the youth justice system may not operate in the best interests of children. There must be additional effort to adequately encourage rehabilitation and the reintegration of the child into playing a constructive role in society. However, the preferred course must be to resolve issues about a child's care and control without recourse to the criminal justice or family court. Careful gate keeping is the key to keeping as low as possible the number of public law and youth justice cases coming before the courts. However when recourse to the court system becomes necessary, there must be an increasing emphasis on treating many children who commit crimes as children at risk and dealing with them through the family care system rather than prosecution.

2.4 The availability of resources and funding is of course pivotal to any integrated family justice court system. I am convinced that the current uncoordinated, single jurisdiction orientated approach is wasteful of resources, time consuming, repetitive, disjointed and far too expensive. A more integrated approach, with a concurrent emphasis on prevention and diversion, will be more cost effective.

2.5 If an integrated family justice system is to achieve community approval, that system requires to be developed and operated in an open and transparent manner. Proceedings must be less adversarial and more inquisitorial and the courts themselves must be modern and family friendly. Although I reject that the current court system is consciously biased for example against non-resident parents, nonetheless steps must be taken to remove even the appearance of bias as a result of delays, lack of judicial continuity and co-operation or a failure to enforce court orders.

## PREVENTION AND DIVERSION

3.1 In many respects the true measure of a successful family justice system is the availability of procedures to prevent that system being invoked. Prevention is a key component in both youth and family justice. It is imperative that the changes that we envisage in the Family Justice Court do not create a net widening effect so that the court itself becomes the attractive focus. The courts must not be seen as the first or best provider of services but rather the last resort when preventative measures have proved unavailing. The key to this is the setting up of an effective system of prevention in which agencies will be held to account for taking such preventative measures. All too often scarce funds are expended with sterile and pointless referrals to the blunt instrument of a court system which can be singularly unsuited and ill-equipped to deal with the sophisticated and complex needs of families and children. The Rt Hon Sir Alan Beith MP Chairman of the Constitutional Affairs Select Committee (CASC) which has engaged in a wide ranging inquiry into the family justice system in England and Wales similarly concluded that the courts are not the best place to resolve complex family disputes. His committee judged that there must be a clear and unequivocal commitment to remove as many child contact and residency cases from the courts as possible. Family problems ought to be properly assessed and where appropriate mediated upon in fora quite outside the court system before proceedings are ever contemplated. Indeed, should they slip through they should be looped back to the appropriate problem solving resource. It is not the purpose of this narrow focus on a Family Justice Court to deal with measures of prevention and diversion in detail. However I unhesitatingly extols the virtues of a strong and adequately resourced mediation system which would be the gateway through which most couples should have to pass before engaging the services of the court in most of the financial, separation, access and social problems which currently take up so much of the courts time. It is my view that the Legal Services Commission should regard this as a pre-requisite to the provision of State funding for litigation. The CASC felt what where appropriate most parents should be obliged to attend a compulsory preliminary session with a mediator to help steer people away from the court system although the government objected this recommendation. There are available a number of preventative tools to be utilised. Mediation bodies such as Family Mediation (NI) and Relate, the services of welfare officers even at the door of the courts and contact centres to obviate many of the problems of contact can all be invoked to calm the warring factions<sup>8</sup>. The latter are available without court order where a voluntary agreement can be reached. There is a need for a co-ordinated information strategy to promote recourse to preventative services to enable all those engaged with families to sign-post them to appropriate and relevant services.

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<sup>8</sup> Court Welfare Officers – Report of Children Order Advisory Committee April 2006.

3.2 Anxious scrutiny be given to the current approach being adopted by the Australian Government of Family Relationship Centres. The Australian Government is seeking a cultural change in the way family relationships are approached. Underpinning the Government's reforms is the importance of promoting healthy family relationships, preventing conflict and separation, encouraging agreement rather than litigation and promoting the right of children to have meaningful relationships with both parents. The Government desire is to ensure:

- (a) Separating parents sit down, focus on their children and agree on parenting arrangements rather than going to court, and
- (b) Families get help to improve their family relationships and prevent conflict.

3.3 Family Relationship Centres are thought by the Australian Government to be central to achieving such cultural change and the operators of these Centres must be geared to achieving the Government's objectives. The centre's performance in achieving outcomes will affect the amount of funding they receive. Centres must be focused on how they are going to keep separating parents out of court and focused on their children's needs. A significant amount of the Centres resources are expected to be used to provide free joint sessions (including dispute resolution) for separating parents. Helping separating parents to reach parenting agreements and joint sessions will be a very important part of the Centre's work. In providing dispute resolution services, such Centres are not to see themselves as merely a process on the way to court. Centres and other dispute resolution services will use best practice and child focused dispute resolution to enable separating parents to resolve their difficulties without the need to go to court.

## ONE JUDGE ONE FAMILY

4.1 It is my conviction that if we are to have a genuine problem solving system of justice within the family courts which will focus on addressing the underlying problems that beset families in strife, then we must achieve the goal of changing the way the justice system currently treats families and children. It is crucial to promote more informed judicial decision-making, consistency in court orders and fewer court appearances as well as providing enhanced services to victims and ensuring offender accountability where appropriate.

4.2 The mission must be to work towards basing our approach on the one family – one judge concept with an integrated family justice system to handle all related cases pertaining to a single family. The court must seek to promote justice and protect the rights of all litigants while providing a comprehensive approach to case resolution, increasing where appropriate offender accountability, ensuring victim safety, prioritising the welfare of children throughout, integrating the delivery of social services and eliminating inconsistent and conflicting judicial orders. Families in trouble need to address often a myriad of inter-related family problems any one of which may bring a family into the court system but which may mask underlying problems of a diverse nature. Our aim must be to address that family in a comprehensive holistic manner whilst providing integrated service delivery and approving both court efficiency and informed judicial decision-making.

4.3 It is my belief that a single judge must have the authority to handle and direct the family, criminal and matrimonial aspects of that family. This requires a specialist family court in which specialist professionals practise and in which experienced family judges sit to ensure delivery of justice at a high and consistent quality<sup>9</sup>.

4.4 In the best of all worlds, literally one judge would handle all aspects of that family, in whatever jurisdiction those problems arise, provided they have a family link. The reality of the matter is that it probably will be impossible in all cases for the same judge to deal with all jurisdictional aspects given that the seriousness of the problems may vary. Thus serious criminal matters eg. murder or rape will be dealt with in the Crown Court, whereas earlier non-molestation orders or applications for financial arrangements may already have been dealt with in a domestic proceedings court. Moreover judges move on from one jurisdiction to another and family problems do not follow the life span of working judges or magistrates. Nonetheless the one judge one family concept can be embraced at least by one judge or resource

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<sup>9</sup> "Towards a unified family service" District Judge Jeremy Rawlins, New Law Journal 28 .....

administrator having overall control and knowledge of what is happening within that family. Entry into the family justice system – whether it be through the criminal aspect of domestic violence, or through a civil side of non-molestation orders or ancillary relief - should trigger the involvement of a judge with family justice expertise who will thereafter become the coordinating judge made aware of all subsequent developments in that family's history notwithstanding that he may not be individually dealing with each aspect. Where possible however that judge or magistrate should deal with the disparate aspects. We must therefore create conditions in which there can be a free passage of work between for example the Family Proceedings Courts and the Family Care Centres and, for that matter, the High Court. In terms therefore there should be a unified administration where the courts at all levels work closely together to ensure wherever possible that there is a consistency in the hearings. At the very least, there must be a structured and unified administrative system so that the file on the family in question is always returned to the key judge or resources administrator in the system who is case managing that family and who is aware of everything that happens in the family court system in the life span of that family. It will be his job to ensure that corridors of information are opened up in an appropriate manner to whatever other judge may be dealing with that family if the holding judge finds it impossible to do so. Never again must we endorse a system whereby a court dealing with an instance of domestic violence is completely unaware of other proceedings about that family which may touch on fundamental issues of contact and residence with children or that proceedings dealing with financial arrangements are outstanding. Similarly we must strive to change a system of juvenile justice where young persons often appear without parental support or interest and the courts fail to trigger an in-depth and comprehensive assessment of family circumstances wherein the responsibility of parents and integrated agency work can be reviewed holistically. There must be a close liaison between all aspects of family justice and juvenile justice to ensure again that the judge or magistrate is made aware of all developments within that family whether it be domestic violence, juvenile court hearings, ancillary relief, divorce, residence, contact, prohibited steps applications, parental responsibility etc. To do this, within the family justice system, there must be flexibility and greater freedom of passage between the courts at family proceedings level, Family Care Centre level and High Court level. There is no reason whatsoever in logic or in law why a family judge or magistrate, should not deal with the criminal aspects of domestic violence or juvenile justice within the ambit of a family justice court. The fact that there is currently a difference in jurisdictional approach between for example the adult criminal courts, the juvenile criminal courts, and the family courts should not impede change. Such artificial divisions in the context of family justice are a recipe for disparate, unstructured, grossly inefficient, expensive and conflicting justice. Only by the creation of a Family Justice Court, to which the sole criterion for entry is family and children involvement, can we change the culture of division. There should be a single

point of entry into the FJS wherever possible for all family issues leading on if necessary to that case being assigned to a higher tier if necessary.

4.5 This is not a particularly new idea. In England and Wales a new unified Family Court Service is planned already for 2006, aiming to develop a more streamlined and unified service across all family courts. The Government's family justice strategy in England and Wales centres on having a single integrated system comprising Magistrates' Courts, County Courts and High Court, where cases should be heard at the most appropriate levels suitable to their nature and complexity. Under this reform the differing rules and procedures of each court would be rationalised. It is our submission that such a system, tailored for our specific and unique circumstances, would be introduced following due process as expediently as possible.

Such a system will include a number of key ingredients.

4.6(1) One judge or magistrate or perhaps a court co-ordinator/resource administrator who will have full responsibility for co-ordinating all cases involving that family or child and who will ensure that appropriate information is passed on to any other judge or magistrate dealing with that family.

4.7(2) Wherever possible it is necessary to break down the boundaries between the jurisdictions in the family context so as to enable a single judge or magistrate to have the authority to handle family, criminal and matrimonial matters at an appropriate level. Thus a criminal allegation of domestic violence should be dealt with by a family judge or magistrate at the appropriate level. Once seised of the case, that judge or magistrate should thereafter deal with any matter touching upon that family arising whether it be of criminal nature, juvenile justice nature or a conventional family justice matter. The Allocation of Proceedings Order should continue to apply and if a case is raised to another tier, then wherever possible that judge should thereafter continue to deal with all aspects of the family.

4.8(3) The family court system must create an administrative process through which eligible cases will be identified. In a small jurisdiction such as Northern Ireland, with only four separate Family Care Centre areas and limited family proceedings jurisdictions, it ought not to be difficult to set up such a system with the benefit of a court co-ordinator and suitable IT system to ensure no case slips through the net. Training of the judiciary and magistracy as well as the lay magistracy, should also provide certain safety nets to ensure that the necessary triggering process is achieved. The court system must develop protocols for identification of eligible cases and ensure that these cases are moved at the earliest stage from the originating court to the direction and management of the judge or magistrate (or court co-ordinator) in the family court who will now take responsibility for that

family. Individual cases of course will not be consolidated but whilst they will retain their distinct identities, they will be dealt with wherever possible by the same judge or least under his or her direction.

4.9(4) New technology must be used to serve this process. IT is the key to ensuring that relevant information flows continuously, quickly and reliably to and from the relevant judges and magistrates. Technology is also crucial for tracking the results of the court. Cases must be logged in and tracked to ensure that basic data on individual family units as well as information on each type of case is co-ordinated. This is a system now regularly utilised in New York in the New York State unified court system which deals with integrated domestic violence courts. I strongly recommend that Court Services should liaise at an administrative level with the New York system in order to avail of their assistance in setting up such a process<sup>10</sup>.

4.10(5) Critical to a unified court system is unified and structured inter-agency co-operation. Training and education for judges and non-judicial personnel in the family justice system is an integral part of the courts ability to handle related family matters in a consistent and comprehensive manner. For example intensive domestic violence training will be provided to judges, court staff and also agencies working in the family justice system in order to keep all personnel abreast of the latest research and best practices in the field. Consideration should also be given to joint training exercises to promote shared learning and understanding of varying professional roles with regard to responding to domestic violence.

4.11(6) Not only must there be increased communication and co-ordination of services with improved levels of co-operation and opportunities for cross-training and feedback, but there must be a system which ensures that there is readily available to the court, on the spot in the family justice building, swift means of access to service agencies and a means of triggering court decisions without delay. In terms we need to set up a resource driven one stop shop. Courts dealing with family matters should have available in the building in which the Family Justice Court is centred, offices or desks attended by those with an expertise in:

- (a) Domestic violence counselling.
- (b) Drug treatment.
- (c) Job training.
- (d) Anger management.
- (e) Alcohol problems.

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<sup>10</sup> New York State Unified Court System Admission Statement and Key Principles.

- (f) Mental health aspects.
- (g) Housing assistance.
- (h) On site day centre so that parents can take advantage of these other services whilst children are being cared for for a short period.
- (i) Safety planning.
- (j) Support services for victims and offenders in general.

4.12 At the very least there should be a presence of domestic violence counsellors, alcohol counsellors and someone available to assist with housing and job training. All this needs is one office with a number of desks so that a court can ensure that before any final order is made up in cases, direct assistance can be given on the spot for future reference. As will be seen when we are dealing with domestic violence courts, the presence of such on site support services for both victims and offenders can be vital to ensure not only that the court can effectively monitor developments thereafter, but that people do not leave the court without having at least a start to their problems being solved. Indeed the stage should come where those services are open not only to those who are involved in the family justice system but who wish to avail of those services as a drop in centre for the local community. The Family Justice Court must acquire a reputation as a problem solving source, not only for those who have triggered an entrance into the family court system but also as a source of help or refuge for those who might. I emphasize that this is not particularly radical or innovative thinking. It already has been introduced in the Croydon Family Justice Centre which is the first centre in Europe to offer a co-ordinated and improved service to victims of family violence. That centre is located in one building in the centre of the town and close to the Magistrates' County and Crown Courthouses. It will house the borough statutory agencies and more than 40 community and religious groups. Victims of family abuse will have access to medical, legal and support services. Police officers, doctors, counsellors, social workers, housing and benefit officers, education advisors and interpreters will be on hand to offer advice and there will be facilities for children to play safely in an adjoining room. This initiative is a partnership between Croydon Council and the Family Justice Centre in San Diego California in which the model is based. It is hoped that this will be the first of many such centres. The aim is support the success of the specialist domestic violence courts in Croydon in bringing more abusers to account for their actions. It is hoped that in time these services will help in reducing the number of domestic/family murders and serious incidents of abuse and reduce homelessness. The centre will be culturally sensitive and increase the options available to victims. It is being funded by a partnership of public and private agencies. Croydon Council,



the local police force and other agencies will fund existing salaries, but fundraising through the business community may be required to support the start of costs. There is absolutely no reason why this approach should not be developed in Northern Ireland perhaps starting with a pilot scheme in Belfast. Our advance on the Croydon thinking is that domestic violence courts should be part of an integrated system of family justice where those same resources are open to members of the family not only involved in domestic violence but also in other family problems. Courts thus become a problem solving location rather than an over-expensive disparate collection of single and unconnected jurisdictional points of contact. Doubtless this approach is resource intensive. On site services are notionally expensive but if they are serviced partly by non-profit service providers who will staff the court at no extra cost, then the cost can be very substantially reduced.

## THE CARE INTERFACE WITH YOUTH JUSTICE

5.11 While continuing to advocate strongly that the age of criminal responsibility be looked at, we see an urgent need for a change in philosophy so that children who are charged with moderate offences can be assessed in the context of their family problems before the Youth Court considers them as potential offenders. There is a requirement to make a need for provision in the youth justice system similar to that under Article 56 of the Children (Northern Ireland) 1995 before a child is even asked to plead to the offences which brought him to the Youth Court. If that report discloses serious problems in the family, the Youth Court may then either deal with the child's offences or more likely send him to the Family Proceedings Court. Moreover that youth court should have power, where the issues are self-evident to send the child immediately to the Family Court to be dealt with under the care legislation. That would require the Trust or social services to be the applicant in the family proceedings. There is a danger that Trusts may be unwilling since they have already too many cases on their books. But the fact of the matter is that if we provide sufficient resources, we will be able to "catch young children and give them effective help before they become habitual offenders". A project in the Southern Health and Social Services Board, supported by the Children's Fund, "Child and Parent Support" (CAPS) working with children who are getting into trouble aged 8 – 11 has recently been positively evaluated. It would be good to see such initiatives adopted across Northern Ireland. In doing so it might save a life time of crime by the individual and a life time of cost to the State. These children are part of our future and we need to do something radical to help them. We need to protect ourselves and our children in the future and the community in general from their re-offending<sup>11</sup>. This is an approach that comes not only from me but has the strength of support from such eminent persons as Dame Elizabeth Butler-Sloss former President of the Family Division. In this way every child will be able to have their needs and risks addressed in a system that allows for the management of prevention, family support, diversion and involvement of the whole family as part of a continuum within an overarching system under the umbrella of a Family Justice Court. I recognise only too well that society in Northern Ireland or in the Republic of Ireland is not ready for treating all children within the family care system where there have been serious offences perpetrated. Accordingly it might be that a list of intermediate offences against the person and property related offences and other minor offences could be drawn up which would allow for swift allocation from the Youth Justice Court to the Family Justice Court almost as a matter of course<sup>12</sup>. It seems to me that an amendment for example to the Criminal Justice (Children) Order 1998 to include a clause similar to Article 56 with reference to the issues we have raised could easily be introduced. I emphasise that at this stage it is not my conclusion that those children who

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<sup>11</sup> Dame Elizabeth Butler-Sloss – Lecture to the Bar Council – December 2005.

<sup>12</sup> "Passing the Black Bag" at page 264.

commit serious crimes such as murder should escape prosecution or that they should not be dealt with through the ordinary juvenile justice system.

5.2 I note with approval the establishment in Northern Ireland of a new high level Youth Justice Forum covering youth justice issues. The aim of that Youth Justice Forum is to facilitate communication and understanding between statutory bodies working in this field and to promote the development and maintenance of a seamless youth justice service. It will promote better communication and a shared understanding of the different organisational agendas. It also offers opportunities to address cross-cutting issues on a collaborative basis, closer partnership and joint working, shared intelligence, joint horizon gazing, identification and sharing of good practice and the establishment and achievement of common standards.

5.3 In short, it is my view that many aspects of youth justice must be dealt with under the umbrella of a new over arching family justice court where the emphasis in appropriate cases will be on child welfare and not criminal punishment. The system must be predicated on the assumption that children and young people are developmentally different from adults and more amenable to intervention within a family court setting. If this is coupled with the other secure and collaborative measures outlined above, justice for children will be better served.

## CONCLUSIONS

6.1 This paper is not about a quiet revolution. It is merely an attempt to reassert the relevance of the family justice system in the 21<sup>st</sup> century. The administration of justice carries an obligation to address the problems that bring people to court whether as victims, defendants or simply concerned citizens. To resonate with relevance that system must become a problem solver rather than a case processor.<sup>13</sup> This requires a tailored approach to justice making sure that judicial sources match the special needs of each case. This necessarily involves an integrated approach employing all those services crucial to family problems in the court operating procedures. Decision-making can only be truly informed if sufficient information from various involved sources are put before the court. Moreover judicial monitoring is the key to effective problem solving in a way that has hitherto been ignored. The standard tools commonly at the disposal of the courts – removal of children from their families, probation or incarceration for young offenders – do not offer sufficient viable long term resolution in many instances to deep set family problems.

6.2 The concept of problem solving justice is not new. It is already flourishing in the United States of America, South Africa, Canada, Scotland, New Zealand, Australia, Bermuda, Jamaica and to some extent parts of England. Such a cultural change in Northern Ireland in the thinking of courts requires investment in research, technology, training and social service provision. But the cost of not pursuing problem solving justice is far greater. The needs of victims go unaddressed, young offenders continue to commit crime after crime, families spawn more and more dysfunctional members and trust in the justice system becomes eroded.

6.3 There is no doubt that some family problems will continue to produce grossly abused children who will require instant State intervention. Serious crimes will still merit the heavy hand of the traditional courthouse approach. Serious offences of domestic violence will still result in very heavy prison sentences. Young offenders who commit murder, robbery and rape may still be incarcerated. Parents who abuse the immeasurable privilege of parenthood will still forfeit the rights to the parents. But in many instances all of these consequences can be averted by early informed intervention and joined up holistic procedures which break down the walls between separate jurisdictions and allow the symptoms of deep seated family problems to be dealt with in a more co-ordinated fashion. A more collaborative multi-disciplinary approach, relying on partnership with the court process, may involve rethinking traditional roles but will also promote the solving of deep set family problems which will in turn arrest the break up of families and the spread of crime. Victim safety and offender accountability is not merely a mantra for domestic violence courts. It is a clarion call to the entire family

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<sup>13</sup> "Good Courts" Gregg Bernam and John Feinblatt: Published by New Press at page 5.

justice system where children are often the unheard and unseen victims of family dysfunction and where parents must be made sufficiently accountable for their failures. So also must our agencies be required to collectively examine where they have failed to identify and build upon family strengths.

The concept of one judge one family, itself a flexible unconstrained notion, not only promotes greater consistency but more informed justice where judges focus on the overall, comprehensive and underlying problems of family chaos in all its manifestations. This can only be done by an overarching family justice court which is privy to all the aspects of a family in chaos and which has vested in it the power and resources to deal in an holistic way with the various symptoms that currently manifest themselves in disparate court locations.

I am convinced that these ideas must move from the margins to the mainstream if family disarray in our community is to be arrested. Any new idea is, and should be, subject to scrutiny. Justice must not have two faces and the rights of all participants within the justice system must be preserved. It is my view that the changes envisaged in this paper can and will preserve traditional rights while, crucially, creating new solutions to current problems which at the moment appear impenetrable.