GRESHAM COLLEGE

30 NOVEMBER 2017

WHAT DO JUDGES DO IN THE FAMILY COURT?

PROFESSOR JO DELAHUNTY QC

In my first lecture as Gresham College's Professor of Law, *'Sex, Death and Witchcraft: What Goes On in The Family Court'*,[1] I explained how diverse the work in a family court room was, reflecting on my experiences as a QC but, for this lecture, I want to explore:

- The reality of the work I do as a roving Recorder (a part time judge at County Court Level)
- The impact of austerity on the justice system
- What happens when the system goes wrong and judges misbehave
- Some thoughts on how our justice system needs to adapt and respond to society in 2017 and beyond.

So, what do judges in the family court system do on a day to day basis? Essentially it depends on their level of appointment as cases move up the judicial ladder depending on complexity. The most serious cases involving life and death decisions or with complex international issues will be dealt with in the High Court, relatively simple matters such as resolving contact disputes between parents or dealing with domestic violence relief can be dealt with by lay magistrates. Between those extremes there exists a rich and diverse seam of family life that judges have to mine to make the best decisions they can for the families who come before them.

How do I do my job? Can I sleep at night? Am I an 'enemy of the people' when I remove a child and place it for adoption against the wishes of its birth family because I have found that the child has been abused within its family home? Or am I, in stepping in to protect a child, giving it a chance to grow up free from physical pain and neglect so as to reach its full potential in a 'forever' family who have positively chosen to adopt him or her? What of the children who can neither live with their birth family nor with adopters because it is not safe for them to live with a parent or family member but they are too old to be able to embrace adoptive parents: that means foster care for most, a children's home for some?

Too often the ill-informed press publishes stories that present parents as monsters or turn social workers and judges into cruel and vengeful creatures of the state. Neither is true.

A family has a right to bring up their child free from state interference but not at the cost of that child to be protected from significant harm and abuse from the very parents who society expects to protect and nurture them. Sometimes removal of the child is the only option, but there is a wealth of other legal tools to strike a balance between leaving a child at risk and removal. The court has a formidable array of tools at its disposal to use to protect the child whilst supporting and monitoring the parents in caring for it: Supervision Orders and Assessment Orders. The role of the family judge in care cases is to independently scrutinise the evidence called by the local authority and the parent, to listen to the wishes and feeling of the child who is separately represented by their children's guardian and to make a decision on that child's future care arrangement based on that child's best interest. The welfare of that child is the courts paramount consideration (please see my previous lecture

[1] Professor Jo Delahunty QC offers an inside perspective of the family justice system and discusses some of the issues family courtrooms deal with http://www.gresham.ac.uk/lectures-and-events/sex-death-and-witchcraft-what-goes-on-in-the-family-court-room

"*Why There Is No Such Thing As A 'Typical Family' In The Family Court*"[2] for the legal framework on this balancing act).

A salutary reminder about why there are limits to the right of a family to exist without state intervention where to do so exposes a child to abuse and neglect came across my social media feed very recently.[3].

Twitter can be a powerful and immediate way to share information and learn from one another. Through it I was privileged to read a blog from a phenomenally impressive woman who is now a criminology undergraduate. She introduced herself thus

> 'My name is Michaela. I am a dreamer, a mother, a provider, a young woman with a passion, ambition and a strong resilience to not let a mistake as a teenager drive my life'
>
> @Michaelabooth7, a parent, a mother, a former prisoner.

From my reading: she is a survivor, an optimist and an achiever.

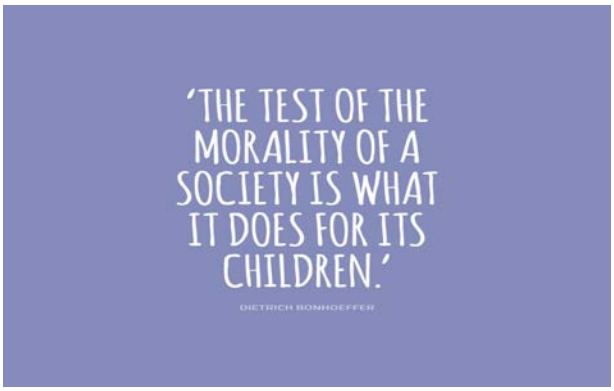
Her story in her words:

> When I was born, I was a child in need. My parents were heavily drug dependant.
> I assume I came into contact as a baby with various healthcare professionals, my parents encountered the criminal justice system and other agencies were involved around the drug issues.
>
> *Age 4* - At this point in my life I started primary school. Often being the last child to be collected at the end of the day, often not doing homework, not bringing in the right books or P.E kit, not fitting in[2] with the other kids, being tired, withdrawn, protective of my sisters. Bruised, late, problematic at times, phases of bedwetting and little to no parent interaction with the school.
>
> *Age 11-12* - I started high school, often late, truanting, not doing homework, disruptive, tired. I don't recall a single teacher throughout any time in my school days, asking me what was going on at home? I of course wouldn't just tell them off my own back, because as far as I was concerned, my life was normal.
>
> *Age 16* - I was constantly ringing, turning up to the office of my mum's drug worker, expressing concerns over mental health issues, providing evidence, explaining risk concerns. No one listened, no concern still, over my own wellbeing or safety. I was 16 and a child, being ignored when expressing serious, heart breaking concern of my mother.
> Is in not the case, that all of the professionals knew I was at risk, knew I was experiencing these things, knew I was in need but chose to ignore it? Labelling me as a teenage rebel, a naughty girl, the black sheep was easier that recognising I was a CHILD, easier than flagging up a situation of a child at risk of harm and easier than dealing with a very troubled and traumatised young child.
>
> Maybe I am hoping, through this brief story of safeguarding, a professional may consider viewing these 'rebels' these 'black sheep' these 'troubled teens' as CHILDREN. Vulnerable, traumatised, exploited, neglected CHILDREN. Who don't cry out for help, who don't open up, who don't seek support because they are merely trying to survive and are not considering how their experiences as children will shape their lives.'

I am going to borrow her leitmotif: its sentiments echo my own

[2] https://www.gresham.ac.uk/lectures-and-events/two-point-one-children-why-there-is-no-typical-family-in-the-family-court

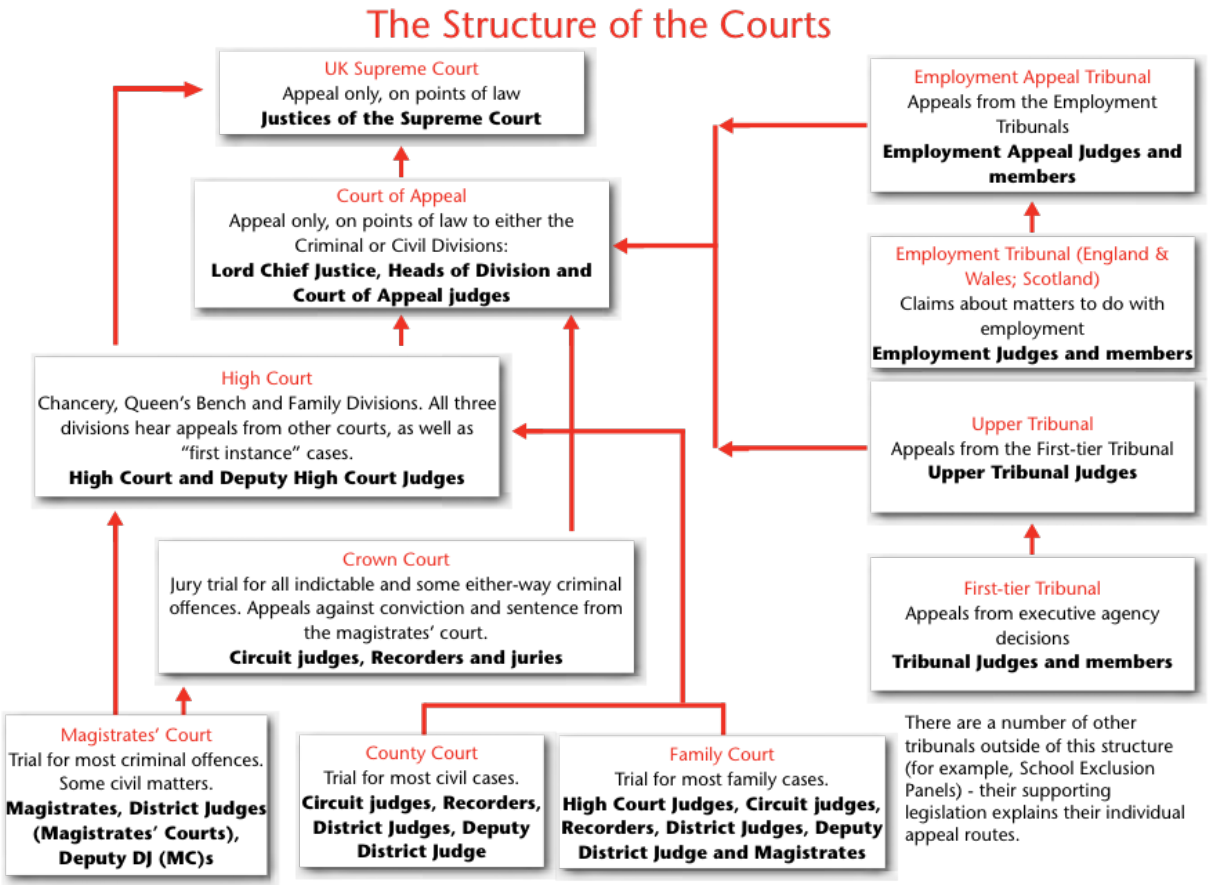
[3] https://michaelamovement.blog/2017/11/10/safeguarding-in-practice/amp/



Dietrich Bonhoeffer

The Structure of the Courts

To ground what I have to say about my work and the judges I work alongside you may benefit from a route map of the court system.



Allocation of Proceedings

The process of decision making is bottom loaded. Save where the High Court has jurisdiction, all other cases are to be dealt with in the Family Court and all proceedings and applications must be issued in the Family Court. Allocation and gatekeeping for the Family Court is dealt with by a centralised 'gate-keeping and allocation team' consisting of a legal adviser (justices' clerk) and a district judge.

England and Wales continues to be divided into geographical areas, judicially led and managed by the designated family judge[4]. The overarching principle is that all the locations at which hearings take place are managed and operated as a single-Family Court, i.e.:

- There is one central location (save in London*), the designated family centre, where the designated family judge is based
- * London: there are three designated family judges for London and three court locations (central, east and west)
- There is a single point of entry, located at the designated family centre, for the issue of process for the entire local Family Court
- There is a centralised and unified administration

Cases that need to be heard by a High Court judge will be heard in the Family Court by a High Court judge i.e. the idea of a central family court is that it becomes 'the hub' for decision making and senior support is pulled in to deal with very difficult cases rather than it being outsourced to the High Court sitting in the Royal Courts of Justice in London. Although, Court Judges travel out 'on circuit' so as to be able to sit in the local Family Court. That said, serious cases, for example involving the death of a child, are transferred to the High Court and the case is heard in the Family Division of the Royal Courts of Justice in the Strand, London but that will only be effected after liaison between the Designated Family Judge of the Family Court and the High Court Liaison Judge who is responsible for that area.

Different Types of Decision Makers

District judges are full-time judges who deal with the majority of cases in the county courts of England and Wales and so are heavily involved in family proceedings. They will preside over both private cases, such as divorce, and public – those dealing with the welfare of children.

You can also have deputy district judges who sit part time.

Family circuit judges deal mainly with two sorts of work. They deal with private cases which are disputes involving parents about their children, for instance who they should live with, who they should see, where they should go to school or if they can move to live abroad with one of their parents. The cases can involve grandparents and other relatives too. The second sort of case is public work; when local councils take action to supervise or remove children from their parents' care because they are said to have been hurt or neglected in some way. These cases can sometimes lead to those children being adopted (placement orders).

Alongside full time judges there is a cadre of part time judges called "Recorders" who are accredited to hear public and private law matters (that's me).

Judges who sit in the High Court have jurisdiction to hear all cases relating to children and exercise an exclusive jurisdiction in wardship. They also hear appeals from family proceedings, courts and cases transferred from the county courts or family proceedings courts. To assist with the work of the High Court there are Deputy High Court Judges appointed under s9 (1) or s 9 (4) > for which see my previous lecture on diversity '*Women at the Bar: Equals before the Law'*.

[4] The framework for how the Family Court is composed, and on what basis applications for family proceedings are allocated to different levels of judge, are set out in the Family Court (Composition and Distribution of Business) Rules 2014, SI 2014/840. The rules:
- provide that certain types of cases can be allocated to certain levels of judge
- prohibit certain levels of judge of the Family Court from dealing with certain remedies
- make provision for the authorisation of judges to conduct specified types of proceedings

The oil for the cogs [5]of the court machinery

No Judge can perform their role without the support of the many people who work in the court system to manage the justice machine and the families who pass through it. The admin staff, the listing clerks, the ushers, the court clerks: all oil the wheels of the system. How many of the public are aware that behind the advertised court hours of 10.30-4.30 there exists a work regime for its staff that means the office work begins at 8 am and lasts until 6. The judges I work with are at their desks by 8.30 and often don't leave until 7. I know of High Court Judges clerks who deal with my e mails at 7.45 am because the judge is in early pre-reading the papers in the case before the court opens for business.

The judge does not have direct contact with the public and the court staff are integral to the enabling the judge to fulfil his or her role as a decision maker.

What is the role of a Judge? Aka, a day in the life of a roving recorder

When judges are appointed, they swear an oath or affirmation to **'do right to all manner of people after the laws and usages of this realm, without fear or favour, affection or ill will'.**

Why Do I Do It?

Because I want to make a difference, for the better, to the most vulnerable of our society.
Because I want to make decisions as a judge, rather than seeking to shape them as an advocate.
Because I think I can do it well.
Because it is important that judges represent the public they serve and for too long the judiciary has been predominantly male, white and drawn from the ranks of the privileged (socially, educationally and financially).
Because it makes me a better advocate.
Because it carries a certain professional and social prestige to be a judge.

I am not unique in any way in having these aspirations. The men and women I work alongside are committed, highly able and acutely aware that the decisions they make for the children who are the subject of the proceedings before them have life-long consequences that are magnified for the families once they leave the court room.

In reality the consequences of a court decision for a parent could not be more profound. If allegations of abuse are proven against them and it is considered unsafe to return a child to their care, then adoption may be the preferred care plan of the state and approved by the court. An adverse decision in a care case may fundamentally affect that parent's ability to be allowed to retain and care for any child subsequently born to him or her. It may affect what contact they can have with other children who remain in the extended family. Contact, if permitted at all, may have to be regulated and supervised.

The consequences of adoption for the child, and for the parent, are life-long and extend into future generations as the adopted child forms relationships with its substitute family whilst the birth family continues to expand, producing cousins and nephews that will never be known to the adopted child.

Birth families are broken, adoptive ones are formed.

The Press and Public Awareness

[5]https://www.gresham.ac.uk/lectures-and-events/womens-lawyers-equals-at-the-bar

Unlike the criminal court system, the public are not allowed entry into the family court room. Proceedings are heard 'in camera' i.e. in private. Accredited press representatives are permitted to enter and listen but what they may report is strictly controlled by the court. Not just during the trial but after it.

What opinions do you already hold about the business of the family court? What have you learnt from media coverage and special media?

Do you think you know enough to form a view on whether the family justice system is a 'secret junta' wrongfully removing children from blameless parents, or is it the polar opposite: a flawed machine where too much focus is paid to the rights of the parents and not those of the child, exposing a child to further harm at the hands of a parent who was, in retrospect, so obviously, a risk?

The President of the Family Division, Munby P has said 'The answer to the criticism of 'secret courts' must be 'more speech, less enforced silence'. To that end on 12.7.2013 he embarked on a programme of reform to increase public awareness of what goes on in our family court rooms because, as he said…. *there is a need for greater transparency in order to improve public understanding of the court process and confidence in the court system'*. The circumstances in which the press was allowed to enter and remain in court was widened. Judges are now expected to make their judgments public by publishing of a web site called Baillie[6] which is publicly accessible.

> 'Public debate and the jealous vigilance of an informed press have an important role to play in exposing past miscarriages of justice and in preventing future miscarriages'.

He said that if confidence in the system is to be *'maintained, or, if eroded, restored' it is vital that its workings be as open to public view as possible.'*

The court is jealous of its duty to protect the child and the child's anonymity so that that child can have a childhood free from gossip or speculation and questioning. But that legitimate aim does not necessarily mean that all details of the case should be withheld from the public. The court's desire to protect the right to privacy of the child, means that the name of the adults involved, the area they lived in, the school attended are also withheld from publication so as to prevent 'jigsaw' identification of the child. But now, more than ever judgments are published on BAILII that set out the broad facts of the case, the evidence that was heard, the expert evidence given and by whom, the applicable law and, crucially, the judicial reasons given for the decision arrived at. Equally importantly: accredited members of the press may seek permission to enter and remain in the family court room, hear the evidence that is being heard, can access the judgment and can publish details of the same (subject to clear rules) as long as the anonymity of the child is protected[7].

Because the general public are not allowed into a Family Court Room, the press are their eyes and ears.

Aside from a few principled and knowledgeable reporters[8], it is all too often the case that the only time the press attend court is to see what is happening when a celebrity private law case is in the offing.

The cases I am involved in, representing the most vulnerable and disadvantaged members of our society, acting for clients with learning disabilities, mental health issues, the young teenage mothers … I don't see the press in court. They are welcome to see what work is being done on the ground by social workers, what pressures there are upon parents struggling with addiction and disability, how experts try to help resolve complex issues such as mental health risk and causation of disputed injuries: and how the judge tries to maintain a fair balance between the competing cases presented to him or her to make the best decision for the child.

---

6 www.bailii.org

7 See also s 97 Children Act 1989

8 with thanks to Owen Davies of The Guardian for his contributions to this lecture through his reporting which I read with interest

The world I work in is inevitably sad. There are few 'winners' to emerge from the shadow of the court room. Yet the bulk of family work that occupies the Family Courts and the angry, desperate voices that echo round the walls of the courtroom appear to be of little interest to the press and public save to those professionals and families who are caught up in it.

Without informed debate, the public – taxpayers- are ill equipped to judge how well (or not) our child protection system and family justice system works.

And when scarce financial and judicial resources are under pressure or even under threat (either through curtailment of legal aid or changes in the way cases are processed and decided: e.g. settlement conferences) - how can the public have their say to influence change before they are made by politicians who aren't answerable for the consequences of polices which impact on our society after their tenure has expired, either because they have moved to a different department, gone to work in The City, Industry or the World Platform , or have been elevated to the House Of Lords.

Legal Aid Cuts and a Court System in Crisis

Speaking at a ceremony in October 2017 to mark his retirement after 18 years as a High Court judge Mr Justice Bodey spoke of presiding over hearings with unrepresented litigants who had been forced to represent themselves when they did not have the required knowledge or skills to do so. The judge said he had felt "first hand" their frustration and he had sometimes had to act as their counsel and ask questions on their behalf.

Mr Justice Bodey was greatly admired by both the Bench and Bar for the humanity and wisdom he brought to the family court. As a result, his farewell was packed with well-wishers and he delivered his speech surrounded by his colleagues in the Judiciary. amongst them Sir James Munby, the President of the Family Division, the most senior family court judge in England and Wales. Mr Justice Bodey spoke for many beside and before him when he said:

"I find it shaming that in this country, with its fine record of justice and fairness, that I should be presiding over such cases."

He was not alone in expressing that view. His comments highlight dismay among the judiciary about the Ministry of Justice's slow progress towards reviewing the effect of the **2012 Legal Aid, Sentencing and Punishment of Offenders (Laspo) Act.**

The legislation removed more than £350m from the legal aid budget and ended the right to legal representation in large areas of the law on divorce, child custody, clinical negligence, welfare, employment, immigration, housing, debt, benefit and education.

The family courts have been amongst the worst-affected part of the justice system. More than a third of family cases involve litigants who are unrepresented on both sides.

Just last month Lady Justice Hale, described Laspo cuts as probably "a false economy" [9]: she said early legal advice would help resolve many legal problems. I, and many other lawyers and judges wholeheartedly agree.

The impact of the Ministry of Justice financial cuts to the court service are profound and distressing.

Here are just a couple of some recent examples to bring the reality of the cuts home:

Re A (a minor) (fact finding; unrepresented party) [2017] EWHC 1195 (Fam) per Hayden J:

[9] with thanks to Owen Davies: https://www.theguardian.com/law/2017/oct/05/uks-new-supreme-court-chief-calls-for-clarity-on-ecj-after-brexit

58. ……I have found it extremely disturbing to have been required to watch this woman cross examined about a period of her life that has been so obviously unhappy and by a man who was the direct cause of her unhappiness. M is articulate, educated and highly motivated to provide a decent life for herself and her son. She was represented at this hearing by leading and junior counsel and was prepared to submit to cross examination by her husband in order that the case could be concluded. She was faced with an invidious choice.

59. Nothing of what I have said above has masked the impact that this ordeal has had on her. She has at times looked both exhausted and extremely distressed. M was desperate to have the case concluded in order that she and A could affect some closure on this period of their lives and leave behind the anxiety of what has been protracted litigation.

60. **It is a stain on the reputation of our Family Justice system that a Judge can still not prevent a victim being cross examined by an alleged perpetrator. This may not have been the worst or most extreme example but it serves only to underscore that the process is inherently and profoundly unfair. I would go further it is, in itself, abusive. For my part, I am simply not prepared to hear a case in this way again. I cannot regard it as consistent with my judicial oath and my responsibility to ensure fairness between the parties.**

D (A Child) [2014] EWFC 39 per Sir James Munby, The President of the Family Division
The President began by quoting the view d of Baker J (a judge of the Family Division)

23. Baker J was understandably extremely concerned by fact that the parents did not qualify for legal aid in relation to the applications that were before him, that is the applications under section 39 of the 1989 Act and for an injunction. He said (A Father v SBC and ors [2014] EWFC 6, para 10):

"The remedy available to parents in these circumstances is to apply under s.39 of the Children Act for the discharge of the care order. But this remedy is not straightforward. A parent whose child is subject to an application for a care order under s.31 is automatically entitled to legal aid, irrespective of means. Not so a parent whose child is living at home under a care order and who wishes to challenge a local authority's proposal to remove the child. Because the father works, and therefore has a small income, he and the mother are not entitled to legal aid. In the current case, these difficulties are compounded because the father lacks capacity, and it is therefore necessary to invite the Official Solicitor to represent him as litigation friend. The Official Solicitor's resources are under great pressure and as a result there are often delays in his responding to such invitations."

24. Baker J concluded his judgment with these general observations (para 51-53):

51 Finally, this case has highlighted a further major problem. These parents face the prospect of losing their son permanently. If this prospect had arisen in the context of care proceedings, they would be entitled as of right to non-means tested legal aid. It is difficult to see why similar automatic public funding should not be available where the local authority proposes the removal of a child living at home under a care order and the parents apply to discharge that order and for an interim injunction under s.8 HRA. The justification for automatic public funding in care proceedings is the draconian nature of the order being claimed by the local authority. Where a local authority seeks to remove, a child placed at home under a care order, the outcome of the discharge application may be equally draconian. Because this father is working, and earns a very low wage from which he has contributed to the support of his family, he, and possibly the mother, are disqualified from legal aid. Miss Fottrell and Miss Sprinz and their solicitors are at present acting pro bono. It is unfair that legal representation in these vital cases is only available if the lawyers agree to work for nothing.

52 This problem is compounded in this case because of the learning difficulties of the parties and in particular the father … A parent with learning difficulties who is not entitled to legal aid is at a very great disadvantage when seeking to stop a local authority removing his child.

53 On the basis of evidence at present available, it seems plain that the father lacks capacity to conduct litigation and therefore needs to be represented by a litigation friend. Such are the demands on the Official Solicitor's time and resources that there is inevitably a delay in his deciding whether or not to accept instructions, and the fact that the father is not entitled to public funding adds to the complications. In this case, I hope that the Official Solicitor will give urgent consideration to accepting the invitation to act as litigation friend. The current system in which so much of the responsibility for representing parents who lack capacity falls on the shoulders and inadequate resources of the Official Solicitor is nearing breaking point."

I respectfully agree with every word of that. And everything he said surely applies with equal, if not in fact even greater, force to the predicament of the parents as they now face the local authority's application for a placement order.

25. As Ms Griffiths pointed out in her submissions to me, the parents were entitled to non-means, non-merits, tested legal aid when facing the proceedings under section 31, at a time when removal of their child was not the plan. Yet when they are now facing an application for the permanent removal of their child and his adoption they are denied legal aid. That, to use no stronger expression, is a decidedly curious consequence of the scheme embodied in Regulation 5 of the Civil Legal Aid (Financial Resources and Payment for Services) Regulations 2013. Some might suggest that it is irrational. No doubt it is some imperfection on my part, but I confess that I struggle to understand the policy or rationale underlying this part of the scheme.

The role of the court:

26. It is no part of the function of the Family Court or the Family Division to pass judgment on the appropriateness and wisdom of the arrangements that Parliament (or Ministers acting in accordance with powers conferred by Parliament) choose to make in relation to legal aid. The legality, rationality and, where relevant, the proportionality of the scheme, if properly the subject of judicial scrutiny, are primarily the responsibility of the Administrative Court. It is, however, the responsibility – indeed, the duty – of the judges in the Family Court and the Family Division to ensure that proceedings before them are conducted justly and in a manner compliant with the requirements of Articles 6 and 8 of the Convention. That, after all, is what Parliament determined when it enacted section 6 of the Human Rights Act 1998, declaring, subject only to section 6(2), that it is "unlawful" for a court to act in a way which is incompatible with Articles 6 and 8.

The President concluded that parents facing an application by a local authority pursuant to s.22 of the Children Act 1989 without access to legal representation was a denial of justice.

The two cases cited above were being heard in the Family Division of the Royal Courts of Justice: The Rolls Royce 'of the family justice system. How much worse is it in the county and magistrates court rooms in The Family Courts across the land? You will find out later in this lecture.

Q: Why has this happened?
A: The Legal Aid, Sentencing and Punishment of Offenders Act (LASPO) 2012 [10]

[10] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/655971/LASPO-Act-2012-post-legislative-memorandum.pdf

During the passage of the LASPO Bill through Parliament, the Coalition Government argued that the Access to Justice Act 1999 encouraged unnecessary litigation, thereby creating unnecessary costs to the courts and the legal aid system, funded by taxpayers. The then Lord Chancellor and Secretary of State for Justice, Kenneth Clarke QC MP, set out in the foreword to the Legal Aid Reform consultation response that: "Legal aid often encourages people to bring their problems before courts, even when they are not the right place to provide good solutions, and sometimes for litigation that people paying from their own pocket would not have pursued."

By reforming the scope of legal aid, the Government aimed to encourage people to pursue alternative methods of dispute resolution. This aim was principally directed at private family proceedings (such as those concerning child contact or financial arrangements following a divorce or separation), where it was argued that out of court dispute resolution via mediation was more desirable than lengthy adversarial proceedings. For example, the Legal Aid Reform consultation response stated:

> "Legal aid funding can be used to support lengthy and intractable family cases which may be resolved out of court if funding were not available. In such cases, we would like to move to a position where parties are encouraged to settle using mediation, rather than protracting disputes unnecessarily by having a lawyer paid for by legal aid.[11]"

Reforms to the scope of legal aid were not the only means by which the Government approached this objective. Part 1 LASPO also increased the proportion of disposable income that clients assessed as eligible for contributory legal aid are required to contribute to the costs of their case. This was, in the words of the Legal Aid Reform consultation response, to increase '*financial ownership of litigation.'*

Different areas of law were affected by the scope changes to different degrees. In certain areas, such as mediation or protective injunctions for victims of domestic violence, the Government did not reduce the scope of legal aid. Other areas, such as welfare benefits, saw large reductions. Some areas retained within scope became subject to additional requirements in order to access legal aid. For example, legal aid was retained for seeking child contact arrangements following a divorce, but only for victims of domestic violence or in cases of child abuse, with applicants needing to provide evidence of their abuse against a list specified in secondary legislation.

Alongside the scope changes, Part 1 LASPO introduced a revised Exceptional Case Funding (ECF) scheme under Section 10. The impact assessment that accompanied LASPO at Royal Assent described the purpose of the ECF scheme as being to '*provide legal aid for cases that do not fall within the scope of civil legal aid but where the failure to do so would be a breach of the individual's rights to legal aid under the Human Rights Act 1998 or European Union law, or where there is a significant wider public interest in funding legal representation for inquest cases.'*

The response to the 2010 Legal Aid Reform consultation stated "*Given the current fiscal deficit [the Government] considers that it is critical that it ensures that the amount that it pays for any service represents maximum value for money. In this context, the Government considers that it needs to ensure that it only pays those fees that are necessary to secure the level of services that are required."*

By withdrawing legal aid for certain types of legal matters and changing the eligibility rules, Part 1 LASPO sought to reduce the levels of '*unnecessary and adversarial'* litigation being brought to court. It was argued that this litigation was creating an unnecessary cost to the taxpayer, not just in relation to legal aid funding, but also in relation to wider costs to government associated with running court proceedings. The main area where the Coalition Government sought to discourage litigation was in private family law proceedings, such as those concerning child custody and financial arrangements following a divorce or separation. The scope of legal aid for private family proceedings was reduced by LASPO.

[11] Memorandum to the Justice Select Committee Post-Legislative Memorandum of the Legal Aid, Sentencing and Punishment of Offenders Act (LASPO) 2012 7 17.

The scope of legal aid in public family law proceedings, such as those where the State seeks to take a child into care, or domestic violence proceedings, was not altered by LASPO, but scope was reduced for private family proceedings.

The family legal aid cuts also coincided with an increase in the number of litigants in person in family proceedings. In 2012-13, 62,000 parties (both applicants and respondents) were represented in private family law proceedings and 45,000 (or 42%) were unrepresented. Representation could have been provided either by a lawyer funded through legal aid or privately; the statistics do not separate the two. In 2016-17, 36,000 parties were represented and 64,000 (or 64%) were unrepresented.

The Consequences

The LASPO Review: The address to the Bar Conference by Sir Henry Brooke QC OBE

Sir Henry Brooke is a former judge, retired mediator, a Member of the Access to Justice Commission and speaks with an authority on the subject of the LASPO impact on accessibility of justice that few commentators can match .

He had this to say to his audience on 4.11.17 when he delivered his address to the 2017 Annual Bar Conference. His declared intention was '*to encourage more and more people, both lawyers and non-lawyers alike, not only to study the Bach Commission's Report on The Right to Justice'* but in particular Appendix 5 which contained *'An Analysis of the Evidence'* authored by Sir Henry Brooke himself.[12] [13]

Sir Henry had just finished a six-week stint co-ordinating the Bar's response to a Government consultation on legal aid and had completed nearly two years' membership of Lord Bach's 'Access to Justice' Commission. The Bach report was published on 22.9.17 [14]. With classic understatement, he described the descent of legal aid since 1989 as '*not a happy story.'* I quote from his address because his words are far more powerful than any I could use and are spoken drawing from a well of knowledge I cannot hope to match.

> No fair-minded person could read Appendix 5 without being very seriously worried about the condition of justice today – for the millions of people who rightly expect the courts to deliver even-handed justice when they need it.
>
> I am talking about help at a fixed fee of £86 for one appointment, and then possibly an additional fixed fee of £208 for a bit more advice and assistance, including negotiation, and a further £125 if a settlement has to be drawn up.
>
> Without this help, warring couples who are not rich enough to pay for a lawyer often have no idea that the courts will put the interests of their children first, or that mediation may be far the best way of settling the way forward. Mothers are now denying fathers all contact with their children for fear, rightly or wrongly, that they will not be entitled to legal aid to help them if their father does not bring them back.

Sir Henry read out a segment of the contribution from an anonymous District Judge to his audience, I reproduce it because it is a voice from the front line, and it is a voice of despair …

> Every day in the family court, with so many unrepresented litigants, is a long nightmare. So very many have mental health problems, drugs, language, learning difficulties. I can no longer do justice or protect the vulnerable child or adult. I am in despair." How can it be equality of arms when only the person alleging abuse (which may be false) in a domestic violence / sexual abuse

[12] http://www.fabians.org.uk/wp-content/uploads/2017/09/Bach-Commission-Appendix-5-FINAL-1.pdf
[13] https://sirhenrybrooke.me/2017/11/04/the-laspo-review-2-my-address-to-the-bar-con
[14] http://www.fabians.org.uk/publications/right-to-justice/

> case gets legal aid. This leaves the unrepresented unable to properly prepare or present their case. I weekly have to deal with people unable to pay for totally necessary drug, alcohol, DNA testing and psychological assessment / treatment. Then if there is an advocate they end up doing all the work and in effect representing both sides. I count off the days to retirement- I would leave if escape wasn't so near. I am in excellent health and would have stayed on many years longer. Until the last eight years all areas of the legal system, to which as a barrister and judge I was so proud to belong, were advancing in dispensing justice but now we go ever more backwards.
>
> The morale of judges and staff is on the floor for a multitude of reasons. No one has hope.

As Sir Henry said in his address:

> Nobody suggested that all the old arrangements should be restored, but there are certain matters which cry out for it, as senior Family Court judges never tire of saying. Legal aid is no longer available if the primary care of your child is in issue. Nor if there is an application to remove your child from the jurisdiction. Nor if you are being accused by your legally aided partner of sexual abuse to the children which simply did not happen. Nor if it is grandparents who have to apply for a care order. Nor if justice screams out for the help of a lawyer when a party simply cannot cope on their own……..The Government thought that exceptional case funding would be the shining knight in amour, galloping to the aid of these litigants. They said that it was likely that grants in private law family cases would be measured in their thousands. Last year fewer than 100 people received it in these cases.

In a chilling passage Sir Henry has written:

> In housing law nearly 100,000 fewer people are now entitled to early legal help than was the case five years ago. One of the most poignant moments of our inquiry came when a Grenfell Tower tenant told us that when they went to their local law centre for help with their landlords, they were told they could receive no help until someone was actually threatened with eviction, or until any disrepair was so bad it was seriously endangering someone's health.

Has the government saved money? Yes. As Sir Henry said '*because the control of expenditure has been left to technicians, we estimated that instead of the anticipated annual savings of £450 million in money of today, the Government is now saving half a billion pounds more*.'[15]

But at what human cost?

Sir Henry declared, and I echo his words:

> 'If we are to become proud of our justice system again, a comprehensive, evidence-based remedial strategy has to be found. Legal aid is far too important to be left to the tender mercies of the Treasury and the technicians and the high priests of PR. A political solution, built on consensus, is what is needed now, and I am pleased that the Bar is willing to play its part in the search for that consensus. As I move onwards through the ninth decade of my life, I will be happy to do all I can to help.'

We are fortunate to have men and woman such as Sir Henry as the mouthpiece of the disenfranchised. He was humbled to receive a standing ovation for his address. He had every right to receive it.

---

[15] See LASPO Act 2012: Post-Legislative Memorandum, Submitted to the Justice Select Committee on 30 October 2017, Figure 10 on p. 52

The impact of the cuts cannot be more serious: a few examples from Appendix 5:

The Consortium of Expert Witnesses in Family Courts told the Bach Commission that their biggest current concerns post-LASPO were that:

- Increasing numbers of parents in private law cases are litigants in person and have no access to representation or to expert reports, so that they and their children are denied justice in serious matters concerning sexual, physical, and emotional abuse, and neglect.
- When expert witnesses are instructed in private and public law cases, the scope of their reports is driven by financial cuts, so that they often have only a limited number of documents made available to them, and they are only allowed limited interviews with family members; when they request more time for complex cases, determinations are made by non-clinical Legal Aid Agency staff, who routinely over-ride the decisions of the Judge who knows the case first-hand.
- Many highly-experienced medico-legal experts from all disciplines have abandoned or restricted their Family Court work because of the rate cuts, the insufficient hours that are allowed to properly undertake an assessment properly, and the difficulty in collecting fees.

The Consortium also said:

> Access to Justice is limited not only for families who cannot obtain representation, but also for families who are publicly funded, but suffer from the cuts now imposed to our work with them. LASPO has undermined, and in some areas destroyed, the innovations brought in by the Children Act 1989 to promote multi-disciplinary work towards protecting, understanding, and helping children and their families. Multi-disciplinary teams, which were once heralded as the way forward, are now restricted to just a few organisations; even most NHS services have shut down their teams for lack of adequate legal aid funding. Professional and expert meetings used to provide opportunities for social workers, Children's Guardians, lawyers, and clinicians to consider together and plan assessments that led to promoting the welfare of children and their families. Cost-cutting for all professionals has led to these meetings disappearing almost entirely. Instead, we now are asked to undertake assessments of complex family matters with little discussion in advance, late instruction, inadequate documentary evidence, and often restrictions on the number of family members we are allowed to see for our investigations.

In a survey conducted by Rights of Women in 2015 71% of respondents said it was difficult, or very difficult, to find a legal aid solicitor in their area, and 53% said that they took no action in relation to their family law problem as a result of not being able to apply for legal aid.

In addition to these problems, Southall Black Sisters wrote of difficulties now confronting black and minority ethnic (BME) women when they seek to access specialist and statutory services. They said that the *"justice gap"* was increasingly being filled by discriminatory and unaccountable community based or religious based forums and 'tribunals' which seek to arbitrate using religious laws that have a profoundly negative human rights and equality impact on the most vulnerable in our society, especially BME women.

The Law Society also addressed these questions, first in the evidence it submitted to the Commission in January-February 2016, and more recently in its publication Access Denied: LASPO four years on – a Law Society review.[16] . They confirmed the grim reality on the High Street of legal aid advice deserts.
In effect, we now have a three-tier family justice system:

- Those who can afford legal advice and representation.

[16] The Law Society. (2017). Access Denied? LASPO four years on – a Law Society review. Accessed September 2017: https://www.lawsociety.org.uk/support-services/research-trends/laspo-4-years-on/

- Those who are entitled to legal aid to provide legal aid assistance and representation.
- Those who cannot.

The gulf between the bottom rung and those above is a chasm.

I am grateful to Emily Duggan of 'Buzzfeed' for her posts on the subject of access to justice. She posted an illuminating article recently on the subject of unrepresented litigants in the civil justice system taking Birmingham's large civil court centre as her basis for research (link below). I would advise reading it in full[17]. Within it she reported thus:

'Official data on the scale of the problem is patchy but BuzzFeed News can reveal:

- The Personal Support Unit, which works in 20 courts to provide emotional support and advice for people without lawyer, has seen a staggering 520% increase in people going to it for help since 2011.
- Six years ago, the PSU had 200 volunteers helping people on just over 9,000 occasions. In the financial year to 2017 more than 700 volunteers helped people on more than 56,000 occasions. This represents a quarter of all those who have received help from the PSU since the charity's foundation 16 years ago.
- A previously unreported study into litigants in person published earlier this year by the University of Birmingham reveals the vast educational gulf between postgraduate qualified lawyers and those representing themselves in court.
- Almost two-thirds of the almost 200 litigants in person they surveyed in Birmingham did not have A-levels. A quarter had no formal qualifications at all.
- Only 45% of people said they had understood what was said in court and 22% did not have English as a first language.

Ms Duggan followed the business of Birmingham Civil Courts for 3 days and took the time to speak to those involved at the sharp end as well as authoritative commentators on the subject. She tells us that The University of Birmingham's law department published research into litigants in person in the city's civil and family courts earlier this year[18].

The study, based on almost 200 questionnaires and a further 25 interviews conducted in the summer of 2016, revealed the scale of the problems faced by those going into court alone and the vulnerabilities they have: 32% ticking conditions on a form relating to mental health or learning difficulties, half of these people also ticked the box for depression. Just 29% were in full-time work and 85% declared an income of less than £30,000 a year. More than half of this group earned less than £14,000 and 53% were on some form of benefits. About half of the sample were in court for issues relating to family law and a further quarter to housing law. The remainder were for issues such as debt and bankruptcy, social security, and some small claims. When asked why they had sought no legal advice, the most common reason given was that they could not afford it.

Ms Duggan spoke to Professor Robert Lee, head of the law school and co-author of the study, says: "*The real issues that struck home to me when I did this study were family and housing. …. The judges do try extremely hard to equalise things but I just don't think it's possible. Because ultimately as a judge you can't say 'This is the point you need to make next.'*"

The Future? Who Is Listening?

Not the government. The deeply worrying scale of the budgetary pressures bearing down on the Ministry of Justice is laid bare in new figures which will dampen already faint hopes of public funding reform.
In a written parliamentary answer, justice minister Dominic Raab revealed that the MoJ will have suffered a cumulative 40% real terms cut in its budget over the fiscal decade ending in 2020.

[17] https://www.buzzfeed.com/emilydugan/a-record-number-of-people-are-representing-themselves-in?utm_term=.okGgjyX8a#.usOZxPgME
[18] http://epapers.bham.ac.uk/3014/1/cepler_working_paper_2_2017.pdf

Current projections show the departmental spending limit will be £5.6bn by 2019/20. In real terms, the comparable budget in 2010/11 was £9.3bn and in the current financial year it stands at £6.4bn. He told MPs: 'I would always welcome being given a crock of gold by the Treasury, but I am conscious too [that] I sit around the table with ministers for departments of health, education, defence and work and pensions – all, like me, could make the argument 'we could really use some extra money'.

Shadow justice secretary Richard Burgon, whose question prompted Raab's release of the figures, said cuts on the scale indicated threaten to take the justice sector from 'repeated crisis to a full-blown emergency'.
Then we had the budget on 22nd November 2017 from which we learnt that spending plans for the Ministry of Justice have been cut by a tenth over two years: i.e. the budget is down by £600 million. In real terms the MoJ budget will fall from £6.6 billion in this financial year to 36.2 billion in 2018-2019 to £6 billion in 2019-20.

The government's review of LASPO was eagerly awaited. There is little hope that change will come in time, if ever for the thousands affected by the cuts.

Angela Rafferty QC, Chair of the CBA (Criminal Bar Association) said 'the poor and vulnerable in society are being denied access to justice.' *'The system is desperate; it cannot afford any more cuts'*. In this, as in many areas, the CBA and FLBA (Family Law Barristers Association) should stand united.

The Mood in the Family Court Is Low

Becoming a senior judge is no longer the inevitable career aspiration for the high-flying barrister as it used to be.

The Lords Select Constitution Committee confirmed on 2.11.17 that which insiders already know: namely that Judicial recruitment is at an all-time low and lack of diversity is putting diversity at risk[19].

In their 7th Report of Session 2017-2019 [20]The Constitution Committee warned that difficulties with recruitment threatens the UK's world renowned legal system and that more work to address judicial diversity is needed.
As the committee reported

> 'During this follow-up inquiry attention was drawn to a fresh problem of recruitment to the judiciary arising from diminished morale among serving judges and, for potential applicants, the reduced attractiveness of a judicial appointment. In particular, we heard alarming evidence that insufficient candidates of the requisite quality have been applying for appointment to the High Court. The issue of diversity on the judicial bench was addressed in our report in 2012, but remains a problem.'

I recommend reading the full analysis which can be found at:

https://publications.parliament.uk/pa/ld201719/ldselect/ldconst/32/3205.htm#_idTextAnchor008

These are simply the highlights:

> '16. We recognise the growing disparity in pay between the private and public sectors, particularly at the senior levels of the judiciary. Without wishing to pre-empt the Senior Salaries Review Body's review, we note that, given the restraints on public sector pay, it is unlikely judicial pay will increase in a way that significantly reduces this difference. The Government should address the

[19] http://www.parliament.uk/business/committees/committees-a-z/lords-select/constitution-committee/inquiries/parliament-2017/judicial-appointments-follow-up/
[20] Select Committee on the Constitution Judicial Appointments: follow-up 7th Report of Session 2017-19 - published 2 November 2017 - HL Paper 32
https://publications.parliament.uk/pa/ld201719/ldselect/ldconst/32/3204.htm#_idTextAnchor005

other issues which undermine the attractiveness of the judiciary as a career path, which we consider later in this report.

23. We do not comment on the economic circumstances in which the Government made changes to the arrangements for judicial pensions. However, we are deeply concerned that the sense of grievance created by the pensions issue has damaged morale throughout the judiciary and will have reduced the appeal of a judicial career to those who might otherwise have been thinking of one.

34.We are concerned about the working conditions of the judiciary and the detrimental effect they may be having on retaining and recruiting judges. The dilapidated state of some courts coupled with administrative burdens, under-resourcing of staff and IT shortcomings all need to be addressed.

35.We are pleased that the Government has said that it is committed to addressing these problems, both in partnership with the senior judiciary, and ultimately through legislation. However, a considerable investment of funds and political energy will be needed to achieve the required improvements both in the immediate future and long-term.

The impact of the Miller decision and the subsequent abuse meted out to the judiciary by a small but strident sector of the Press and the ineffective response to it by the then Lord Chancellor Liz Truss MP cannot be understated.

The committee considered the issue of independence of the judiciary and made the powerful points:

52.The defence of judicial independence is fundamental to the rule of law. We were concerned that it was seen to be challenged by unjustified media criticism following the Miller judgment. We raised our concerns with the then Lord Chancellor, Liz Truss MP, who told us:

"Where perhaps I might respectfully disagree with some who have asked me to condemn what the press are writing, is that I think it is dangerous for a government Minister to say this is an acceptable headline and this is not. I am a huge believer in the independence of the judiciary; I am also a very strong believer in a free press and the value it has in our society."91

53.However, the then Lord Chief Justice disagreed with the position Liz Truss took:
"I regret to have to criticise her as severely as I have, but to my mind she is completely and absolutely wrong about this, as I have said, and I am very disappointed … she has taken a position that is constitutionally absolutely wrong."

Lord Thomas pointed out the importance of upholding the duty to protect the independence of the judiciary and stated that "it really is absolutely essential that we have a Lord Chancellor who understands her constitutional duty." Lord Neuberger agreed with Lord Thomas, and explained:

"It is not an issue of freedom of expression. If, as has been said, newspapers had the right under freedom of expression to be critical of the judiciary—indeed, many would say that they were worse than critical and in fact abusive—surely freedom of expression entitles the Lord Chancellor to correct and criticise what they say, and in my view section 1 of the Constitutional Reform Act means that she has a duty to do so."

54.Liz Truss MP believed "the way to protect independence in the long term is to make the positive case and rebut criticism by explaining to the public why the process is independent and how it works, rather than trying to say that people should not be able to express that criticism, however unfounded it might be."

However, Lord Thomas, although accepting that "criticism is very healthy", said that "there is a difference between criticism and abuse which I do not think is understood." He continued that "it is not understood either how absolutely essential it is that we are protected, because we have to act, as our oath requires us, without fear or favour, affection or ill will."

> 55.The new Lord Chancellor, David Lidington MP, in his swearing-in speech in June 2017, stated that "the freedoms and protections that we all enjoy are of course built on a principle that is much more important than the seals and the symbols of office—the rule of law itself. That principle, together with the independence of the judiciary, form the very bedrock of a free and democratic society." He continued: "I am determined I will be resolute and unflinching as Lord Chancellor in upholding the rule of law and defending the independence of the judiciary."

They concluded:

> 56.It is imperative that the independence of the judiciary is protected and that it is well-understood by the public. This does not impinge on the right of the free press to challenge or to criticise court judgments.
>
> 57.However, there is a difference between criticism and abuse; between challenging the content of a judgment and attacking the character and integrity of the judge handing down that judgment. In such cases, the Lord Chancellor's constitutional duty is clear—as stated in the oath of office, the Lord Chancellor must defend the independence of the judiciary. Should members of the judiciary suffer such personal attacks in future, we expect any person holding the office of Lord Chancellor to take a proactive stance in defending them publicly, as they are unable to defend themselves.
>
> 58.We welcome the new Lord Chancellor's commitment to be "resolute and unflinching" in defending the independence of the judiciary.

So Where Does This Take Us? What Next?

I am indebted to the work of Penelope Gibbs and Matthew Rogers and their publication '***Rethinking judicial independence' published July 2017***[21] which I cannot endorse highly enough and would urge others to read: it is a comprehensive and thought-provoking review and poses important questions about the challenges to the modern judicial system.

Sir Alan Moses, chairman of Independent Press Standards Organisation (IPSO) and a former Lord Justice of Appeal had this to say in his introduction the publication:[22]

---

[21] http://www.transformjustice.org.uk/wp-content/uploads/2017/07/Transform-Justice-Rethinking-Judicial-Independence.pdf

[22] Transform Justice is a national charity campaigning for a fairer, more humane, more open and effective justice system. Penelope Gibbs set up the charity in 2012 to help create a better justice system in the UK. Transform Justice promotes change through generating research and evidence to show how the system could be improved, and by persuading practitioners and politicians to make those changes. Penelope Gibbs worked as a radio producer at the BBC before being inspired to move into the voluntary sector. She set up the Voluntary Action Media Unit at Time Bank before she joined the Prison Reform Trust to run the Out of Trouble campaign to reduce child and youth imprisonment in the UK. Under her watch, the number of children in prison in the UK fell by a third. Penelope has also sat as a magistrate. She has been director of Transform Justice since its foundation.

> 'In the past, it was believed that the best way for judges to command respect and avoid ignorant criticism, and even abuse, was to maintain silence. Indeed, it remains a prevalent view that in return for an absence of criticism, the judges will keep their mouths shut. But is that any longer a bargain that serves the community? It is a bargain which is from time to time broken, noisily and provoking judicial outrage, as the article 50 case illustrated.
>
> The simple and traditional method of preserving independence and authority was for judges to do no more than maintain a total and, it was assumed, dignified, silence.
>
> Reasoning and speaking through judgments, within the confines of a court, and in no other forum, was, we were all taught, the safest rule. Of course, we need reasoned and reasonable decisions from those with the authority they learn from their independence. But we also need to understand how judges work, and discuss and develop the extent to which they can and are willing to engage with the community. They can, in a modern society, no longer command respect from mere deference.
>
> In an age of misunderstanding, which flows from misinformation, if judges contributed with greater vigour and clarity to an explanation of the issues involved and how the judiciary should approach them, then, at least if ignorant criticisms will not altogether be avoided, the ignorance of the criticism would be all the more apparent. The institution of the judiciary is surely, by now, of sufficient strength to withstand abuse while developing more modern and open channels of communication.'

For what my voice is worth, I agree with him. Talking honestly and openly about the work I do and what I encounter as a barrister and a part-time judge in the family justice system was my calling card when I applied to take on this Professorship.

The 'them and us' divide threatens the respect with which the judiciary are held. The education, culture and class distinctions that separated the judiciary from the public used to be seen as a measure of how equipped the judiciary were to pronounce judgment upon the misfortunate or their inferiors.

But now, when judges are described as 'enemies of the people' and that slur is not corrected by the Lord Chancellor swiftly and robustly and the Daily Mail runs a headline which brings the sexuality of one of our judges into play when considering his professional competence, one clearly needs more than an impressive CV to command respect.

All judges are subject to the Guide to Judicial Conduct as these chapters illustrate:

3.1 A judge should strive to ensure that his or her conduct, both in and out of court, maintains and enhances the confidence of the public, the legal profession and litigants, in the impartiality of the judge and of the judiciary.
3.2 Because the judge's primary task and responsibility is to discharge the duties of office, it follows that a judge should, so far as is reasonable, avoid extra-judicial activities that are likely to cause the judge to have to refrain from sitting on a case because of a reasonable apprehension of bias or because of a conflict of interest that would arise from the activity.
3.10: If a judge is known to hold strong views on topics relevant to issues in the case, by reason of public statements or other expression of opinion on such topics, possible disqualification of the judge may have to be addressed, whether or not the matter is raised by the parties.

4.1: As a general proposition, judges are entitled to exercise the rights and freedoms available to all citizens. While appointment to judicial office brings with it limitations on the private and public conduct of a judge, there is a public interest in judges participating, insofar as their office permits, in the life and affairs of the community.

In 2015, the Lord Chief Justice said:

'The judiciary must reflect society to maintain legitimacy: The maxim, "justice should not only be done, but must also be seen to be done," is ordinarily taken to require transparency, impartiality, fairness, and propriety. But in a broader sense, it must also encompass the principle that the public needs to have confidence in the judiciary that serves it, so as to strengthen the legitimacy of the judicial process.[23]'

When It Goes Wrong

Judicial conduct: Three categories I'd like to consider:

a) Points of appeal based on judicial mismanagement.
b) Complaints based on judicial behaviour and trial mismanagement.
c) Judicial bullying and how much of it goes unchallenged.

Appeals Based On Judicial Mismanagement:

LL v the Lord Chancellor [2014] EWCA Civ 237[24] Appeal against decision of Russell J

The case, LL v The Lord Chancellor [2017] EWCA Civ 237 was decided unanimously by Lord Justice Longmore, Lord Justice Jackson and Lady Justice King whereby they all agreed that the appeal to allow the defendant, known as LL, must go ahead.

In the original judgment of 3rd April 2014, Ms Justice Russell found LL guilty of contempt of court and sentenced him to 18-month imprisonment. Two months later, on 4th June 2014, the Court of Appeal quashed this judgment and LL was released.

Where Did The Judge Err?

Family Division judge had made a series of procedural errors, namely:

(i) Including a recital in the third order stating that if the child's grandparents refused to return him to the UK then the court expected the claimant to apply to the court in Singapore to ensure that the child was returned;
(ii) Failing to recuse herself on the grounds of apparent bias;
(iii) Failing to warn the claimant that he did not have to give evidence and requiring him to undergo cross-examination without permitting any evidence in chief;
(iv) Conflating the claimant's non-compliance with the orders with deliberate non-compliance and relying on his failure to secure the child's return to the UK by means of proceedings in Singapore when that was not possible;
(v) Giving the claimant no opportunity to make submissions in mitigation before passing sentence.

It was decided that if a series of procedural errors were linked it would be appropriate to look at their cumulative effect when determining whether they amounted to a gross and obvious irregularity in the court's procedure so as to render a person's detention under article 5.1(b) of the Convention unlawful.

In the Court of Appeal, the Lord and Lady Justices found that the judgment did amount to "gross and obvious irregularity" although, all three justices did highlight that they regretted having to make such a finding of any High Court judge.

[23] https://www.judiciary.gov.uk/wpcontent/uploads/2015/09/speech-lcj-judicial-independence-in-a-changing-constitutional-landscape.pdf
[24] LL v the Lord Chancellor [2017] EWCA Civ 237 http://www.familylaw.co.uk/news_and_comment/ll-v-lord-chancellor-2017-ewca-civ-237#.WhsVj7SFhpU

And can I emphasise that I have not selected these cases featuring one judge: they happen to be the most recent and about the same judge.

M (Children) [2016] EWCA Civ 942: Appeal against the decision of Russell J refusing the summary return of two children

The Court found that Russell J erred in her judgment in placing too much reliance on the aspects of the Cafcass assessment of the children without hearing the parties' evidence on the disputed facts, which led to an appearance that she had reached adverse conclusions against the father and was sympathetic to the mother's case.

The Court also found Russell J's approach to the protective measures to be wrong. The Cafcass reporter confirmed that the boys' welfare would require, inter alia, the provision of stable living accommodation, on-going financial support for the mother, and no unsupervised contact with the father pending further assessment. The Court considered that Russell J was correct to interrogate the father's proposals and accepted that there were live issues raised by the mother regarding the tenancy; however, there was no basis on which Russell J could 'legitimately doubt the efficacy of the USA courts or police force in enforcing protective measures for as long as they were necessary'.

G (Child), Re [2015] EWCA Civ 834 [25]re HHJ Pearl's unfair behaviour towards Ms Toch counsel for mother. The details of which occupy a significant body of transcript material which cannot be summarised without unfairness; this was a private law dispute, in which the mother made allegations of domestic abuse, out of control gambling and inadequate childcare against the father and the father, in turn, made allegations of problematic alcohol use, coaching the child to make false allegations and inadequate childcare against the mother. The judge made some findings but she did not find either party's main allegations proved. The mother appealed on the basis that the case was "tainted by numerous instances of prejudice and bias on the part of the trial judge. Black LJ was very clear that two wrongs do not make a right and "the fact that the judge intervened excessively in the questioning of both counsel would not make the process fair or provide reassurance that the findings that resulted were reliable."

Black LJ was at pains to record that she was conscious that the one person the Court of Appeal had not heard from was HHJ Pearl and that she would, no doubt, have had much to say. She said she had made allowances for the need to manage hearings robustly and had thought long and hard about which side of the line of fairness the hearing in this case fell. However, in the end it was a necessary result of the conclusions Black LJ reached that the findings of fact had to be set aside and the case remitted for directions before a different judge.

> "Managing a trial can be challenging, even for an experienced judge, and it is sometimes necessary to react without much time for refined consideration. Generous allowance always has to be made for this and also for the fact that, even with counsel's help, it is very difficult to tell from a transcript, or even from listening to a recording, precisely what was going on at all stages during the hearing. Furthermore, different judges have different styles and counsel and litigants can usually be expected to cope with the talkative, the uncommunicative, the robust, and even the irritated judge, provided the judge's behaviour does not stray outside acceptable limits."

Cases like this, where an appeal succeeds on the basis of unfairness in the judge's conduct of the hearing, will no doubt remain rare. However — where the judge does stray outside the limits of acceptable behaviour a "careful and cogently written judgment cannot redeem a hearing in which the judge had intervened to the extent […] of prejudicing the exploration of the evidence."

Re S-W (children) [2015] EWCA Civ 27 [26]**appeal against HHJ Dodds**

[25] www.familylaw.co.uk/news_and_comment/re-g-a-child-2015-ewca-civ-834

[26] http://www.familylaw.co.uk/news_and_comment/re-sw-children-2015-ewca-civ-27#.WhsYWbSFhpU

Appeal by mother against the making of final care orders where there had not been a full hearing. Appeal allowed.

HHJ Dodds made final care orders concerning three children at a hearing designated for case management less than three weeks after the application was made. The Court of Appeal overturned the orders (no party supported the judge's actions) deeming care proceedings to be inapt for summary judgment in all but the most exceptional of circumstances (e.g. consent). Amongst the enumerated problems were that, the father of one of the children had not been served with notice of the proceedings, the children's guardian had not seen the children and there were no final care plans before the court. The danger lay when, as unfortunately happened here, vigorous and robust case management tipped over into an unfair summary disposal of a case. This was a case where the judge, in his desire to embrace and put into effect the family justice reforms, had unilaterally disposed of a case prematurely in circumstances where such a summary disposal was not only unfair to the mother but contrary to the interests of the children with whom he was concerned.

So: what do we learn from these cases? Namely that judges can be held to account where their judicial conduct strays outside the bounds of robust and appropriate intervention into an appearance of bias and a lack of judgment.

But the bar is set high to succeed on any point such as this. In courts throughout the land there will have been many instances where parties, or their advocates have felt aggrieved at the treatment meted out to them by the judge as decision maker. However, a sense of grievance, however keenly felt, is not always objectively justified. But when judges make mistakes and fall short of the high standards we rightly expect of them then they must be called to account because the decision they make for the parties who appear before them may be the most important decision to be made in that that families life and they are entitled to have that decision made fairly and impartially.

Remember the oath taken by the judge upon accepting office

'I will do right to all manner of people after the laws and usages of this realm, without fear or favour, affection or ill will."

Onto the second category: matters of complaint against a judge which do not form the subject of an appeal to a higher court of law but which are raised as a grievance with the Judicial Complaints Board.

Complaints against The Judiciary

As a point of interest, one can bring a complaint against the judiciary if the judge has transgressed the following and

1. Used racist, sexist or offensive language
2. Fallen asleep in court
3. Been generally rude
4. Misused judicial status for personal gain or advantage
5. Has criminal convictions
6. Failure to declare a potential conflict of interest

The complaint will be reviewed in line with the Judicial Conduct (Judicial and other office holders) Rules 2014.[27]

If you do: How is a complaint dealt with?

[27] Judicial Conduct (Judicial and other office holders) Rules 2014 https://s3-eu-west-2.amazonaws.com/jcio-prod-storage-1xuw6pgd2b1rf/uploads/2015/12/Judicial_Conduct_Judicial_Rules_2014.pdf

1. All complaints received by the JCIO are sifted by caseworkers. In clear-cut cases of misconduct, the JCIO may advise the Lord Chancellor and the Lord Chief Justice to sack the judge concerned.
2. JCIO may refer the complaint to a nominated judge of at least the same rank as the judge under investigation. The nominated judge will advise the Lord Chancellor and Lord Chief Justice whether there has been misconduct and, if so, what sanction is appropriate.
3. If the nominated judge thinks a complaint is sufficiently serious or complicated, he or she may refer the case to an investigating judge, who must be senior in rank to the judge being investigated.
4. The judge under investigation must be given a chance to respond. If that judge is at risk of removal or suspension, he or she can demand to appear before a disciplinary panel.

But how many complaints have been made in last 5/10/15 years and how many have been upheld, dismissed, withdrawn and who are they made by?

2016/2017

Disposals	Number
Not accepted for Investigation	
Rejected - Complaint does not contain an allegation of misconduct on the part of a named or identifiable person holding judicial office	1,193
Rejected - Rule 11 (Complaint is made out of time)	46
Rejected - Other	18
Dismissed	
21(a) - Complaint not adequately particularised	99
21(b) - It is about a judicial decision or judicial case management, and raises no question of misconduct	79
21(c) - The action complained of was not done or caused to be done by a person holding an office	29
21(d) - Complaint is vexatious	10
21(e) - Complaint is without substance or if substantiated would not require disciplinary action	16
21(f) - Even if true, it would not require any disciplinary action to be taken	231
21(g) - It is untrue, mistaken or misconceived	128
21(h) - It raises a matter which has already been dealt with, whether under these Rules or otherwise, and does not present any material new evidence	24
21(i) - It is about a person who no longer holds an office	13
21(j) - Complaint is about the private life of a judicial office holder and could not reasonably be considered to affect suitability to hold judicial office	2
21(k) - Complaint is about professional conduct, in a non-judicial capacity, of a judicial office holder and could not reasonably be considered to affect suitability to hold judicial office	6
21(l) - For any other reason it does not relate to misconduct by a person holding office	3
Complaint not upheld by the Lord Chancellor and Lord Chief Justice following an investigation	20
Miscellaneous (e.g. complaint withdrawn by complainant)	119
Upheld	42
Total	**2,078**

The judiciary comprises approximately 26,000 individuals serving across a range of jurisdictions. The JCIO received 2,126 complaints in 2016/17, compared to 2,609 in 2015/16. The team also dealt with 526 written enquiries, compared to 662 in 2015/16.

'It is a testament to the high standards of conduct maintained by judicial office holders that, in 2016/17, only 42 investigations resulted in the Lord Chancellor and Lord Chief Justice taking disciplinary action.' - **Stephanie Hack - Joint Head of the Judicial Conduct Investigations Office**[28]**.**

I do not necessarily agree with this conclusion: the figures do not break down who the complainants were. The vast majority (1 193) simply don't jump the first hurdle 'rejected on the basis that the complaint does not contain an allegation of misconduct on the part of a named or identified person holding judicial office'. 99 didn't have a sufficiently particularised claim. Interestingly 231' even if true it would not require disciplinary action to be taken 'and 128 are 'untrue, mistaken or misconceived'.

It is likely, in my view, that many were made by unrepresented litigants who have failed to realise that a disagreement with the judge about their decision is not enough to found a complaint under the strict coda that defines the remit of the JCIO. I don't think one can be complacent.

Some complaints are upheld and they are striking in their content.

The following are headlines published on the JCIO website:

[28] Anon, (2017). [online] Available at: https://s3-eu-west-2.amazonaws.com/jcio-prod-storage-1xuw6pgd2b1rf/uploads/2017/09/JCIO-Annual-Report-2016-2017.pdf

27 October 2017 – Mr Justice Peter Smith

> "The JCIO confirmed in July 2015 that it was investigating Mr Justice Peter Smith about a matter involving British Airways and his luggage which came to light during Emerald Supplies Ltd v British Airways, a case he was hearing. In Spring 2016, the JCIO confirmed that it was investigating a second linked matter connected to the case of Harb v Aziz which he had heard and was subject to an appeal. In May 2016, the JCIO said that the judge had agreed to refrain from sitting until Harb v Aziz had been resolved. He subsequently agreed to continue to refrain from sitting while investigations continued. A disciplinary panel hearing was set for 30 and 31 October 2017."
>
> Mr Justice Peter Smith retires with effect from 28th October 2017. In accordance with JCIO rules, all conduct investigations cease immediately when a judicial office holder retires, and as such investigations into Mr Justice Peter Smith cease on that date with no outcome.[29]

There is a striking echo here of police officers retiring or leaving the service on grounds of ill health before an adverse decision is made and thus escaping public accountability and professional censure. If so, it is repellent conduct that compounds the judicial failure in office.

Joshua Rozenberg, Commentator in Law and a BBC journalist, has multiple times written on Smith J, and first wrote about him 10 years ago suggesting he should leave the Bench.

As he explains:

> "It is just over 10 years since I wrote a column for the Daily Telegraph headlined "Mr Justice Peter Smith loses his judgment". It began: "The time has surely come for Mr Justice Peter Smith to leave the Bench." That time has finally arrived. But at what cost?[30]
>
> 'The Smith debacle demonstrates that the rules for investigating judicial misconduct are designed to protect judges rather than to expose wrongdoing. Those rules must now be changed. There should be no less transparency than there is in other areas of public life.'

5 October 2017 – His Honour Judge Timothy Spencer QC

> The JCIO has dismissed a complaint against His Honour Judge Spencer QC in connection with a case which concluded at Nottingham Crown Court on 12th September.

11 April 2017 – Recorder Jason Dunn-Shaw
A spokesperson for the Judicial Conduct Investigations Office said:

> Recorder Jason Dunn-Shaw was subject to a conduct investigation for using a pseudonym to post comments (some of which were abusive) on a newspaper website about a case in which he had been a judge and another in which he had been a barrister. In his own name, he also used publicly available social media sites to post material or not remove material which was not compatible with the dignity of judicial office or suggested a lack of impartiality on matters of public controversy. The Lord Chancellor and the Lord Chief Justice concluded that this behaviour fell below the standard expected of a judicial office holder and have removed Mr Dunn-Shaw from judicial office.[31]

---

[29] Judicial Conduct Investigations Office. (2017). News - Judicial Conduct Investigations Office. [online] Available at: https://judicialconduct.judiciary.gov.uk/news/

[30] Facebook.com. (2017). Joshua Rozenberg. [online] Available at: https://www.facebook.com/JoshuaRozenbergQC/posts/370107010077888 [Accessed 30 Oct. 2017].

[31] 'JCIO' (PDF 2017) https://s3-eu-west-2.amazonaws.com/jcio-prod-storage-1xuw6pgd2b1rf/uploads/2017/04/Recorder-Jason-Dunn-Shaw-JCIO-Investigation-Statement-1517-1.pdf

6 April 2017 – His Honour Judge Richard Mansell QC
The Judicial Conduct Investigations Office has rejected all complaints received in relation to His Honour Judge Mansell QC's sentencing of Mr Mustafa Bashir. The complaints all related to Judge Mansell's judicial decision and case management and therefore do not constitute conduct within the remit of the judicial discipline process established by Parliament.

10 January 2017 – Her Honour Judge Patricia Lynch QC
The Judicial Conduct Investigations Office has concluded its investigation into the conduct of Her Honour Judge Patricia Lynch QC – following complaints she used inappropriate language in court. The Lord Chancellor and Lord Chief Justice considered the matter and decided it did not amount to misconduct.[32]

Gresham readers might recall that this complaint arose after an exchange in court that hit the headlines: Judge Patricia Lynch QC was sentencing John Hennigan at Chelmsford Crown Court for his ninth breach of an anti-social behaviour order in 11 years and the judge called Mr Hennigan a 'bit if a c****' after he launched a foul-mouthed tirade at her.

She later said:

"Her remarks were 'a momentary lapse of judgment which should have never happened'."

This episode was widely seen as a rare lapse by a sorely tired judge in the face of an unprovoked foul and racist rant at her for doing her job. It made her look human.

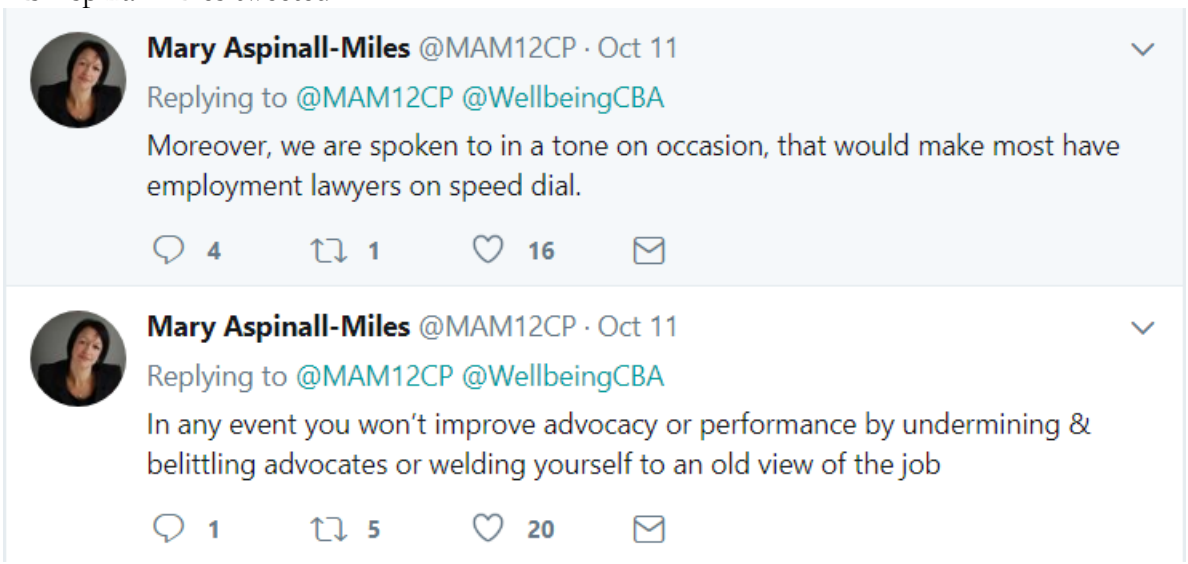
Commentary on the website information: Although these snippets and statements are published on the websites, the procedure remains hidden. We can read that a matter was considered and it did not amount to misconduct, but we do not know who investigated, what was looked at and who was the complainant. There remains a lack of transparency in the procedure for which I have sought, and can find, no rationale or explanation.

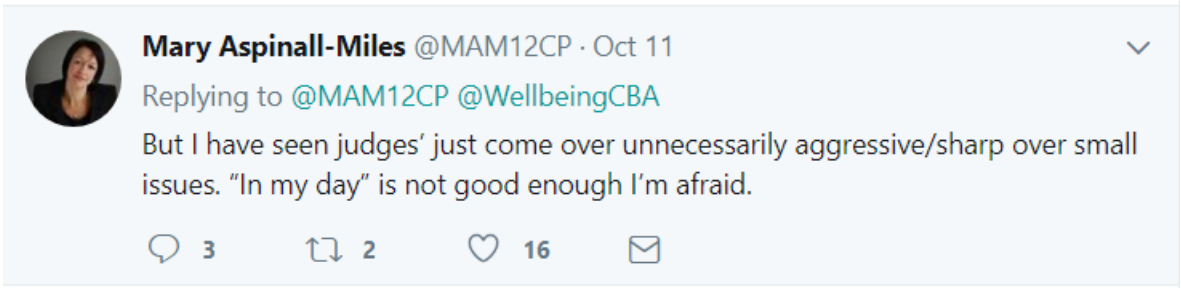
The third category: judicial bullying: the anecdotal evidence

Very recently Ms Aspinall-Miles, a barrister based at 12 College Place, opened the Pandora's Box on judicial bullying on Twitter and, in so doing, many other advocates came forward with their own experiences.

[32] Judicial Conduct Investigations Office. (2017). News - Judicial Conduct Investigations Office. [online] Available at: https://judicialconduct.judiciary.gov.uk/news/

Ms Aspinall-Miles tweeted:





Since Ms Aspinall-Miles shed a light on the issue of judicial bullying more practitioners have come forward. The topic has been in headlines in the Law Society Gazette[33], Legal Cheek[34], Pink Tape[35] and widely discussed on Twitter.

On Pink Tape, Lucy Reed, a barrister specialising in family law and also a family mediator posted a blog post about the 'striking parallels' between the #metoo campaign and judicial bullying. She writes:

> Most obviously, sexual assault is about power as much as it is about sex. And film producers are to aspiring actors what judges are to lawyers. What they say goes. My experience of judicial bullying has helped appreciate why it is that women don't often call it out. Because they are powerless, paralysed, silenced

She continues:

> 'A very few judges are bullies all of the time, some occasionally slip through pressure or personal circumstance. Both lawyers and judges are under increasing pressure, and just as we tell our children that bullying at school is often borne of the insecurities of the bully, I suspect that this

[33] Hyde, J. (2017). Open justice for judges. [online] Law Society Gazette. Available at: https://www.lawgazette.co.uk/comment-and-opinion/open-justice-for-judges/5063036.article

[34] King, K. (2017). Criminal Bar Association: 'Horrible culture of shame' allows judges to bully junior barristers - Legal Cheek. [online] Legal Cheek. Available at: https://www.legalcheek.com/2017/10/criminal-bar-association-horrible-culture-of-shame-allows-judges-to-bully-junior-barristers/

[35] Reed, L. (2017). Me too – judicial bullying. [online] Pink Tape. Available at: http://www.pinktape.co.uk/rants/me-too-judicial-bullying/ [Accessed 30 Oct. 2017].

issue is at least in part exacerbated by the immense pressure on our judges. It is a tough job, and judges are only human. That doesn't make bullying excusable but it's important to say nonetheless. But here I'm more interested in the impact than the cause. Because I also suspect that some judges do not realise that what they say and how they behave affects those who appear before them long after they leave the courtroom.

I've experienced shouting judges, rude judges, very demanding judges (haven't we all). All of that I can withstand, it comes with the job and is water off the proverbial. But only once have I had an experience that I would call bullying (though I have seen the impact of chronic bullying on others). It was a while ago now, though recent enough for me to have been surprised and ashamed that as a lawyer with more than a decade's war stories I still found it so debilitating and so undermining of my confidence as a lawyer.

I'm not going to tell that story here, because it is intimately bound up with the private details of my client's case, and because in my heart I hope the judge in question was acting out of character and regrets their behaviour and would be mortified to read of it. But also, because it is actually too hard a story to relive. Having done so earlier this week I was unexpectedly right back there, a gibbering wreck, wracked with guilt for breaking down at court, for failing a client (I didn't but at the time I felt that I had), humiliated at my inability to cope and the treatment of me in front of peers and clients, powerless to make it stop because the judge had complete control."[36]

Lucy Reed in her blog spoke eloquently about the impact of bullying that too many of us recognise as reflecting an experience of our own or of a good friend. It is rare that this behaviour is brought to light or to brook. This is all I could find when searching for material beyond the anecdotal.

A (Children) [2015] EWCA Civ 133[37] on appeal from HHJ Robert Stephen Dodds

A successful appeal from a peremptory dismissal of an application for DNA testing by a 13-year-old child (in a bid to discover the identity of her real father) on the basis she had been deprived of a fair hearing. The Court of Appeal accepted the appellant's submission that the hearing amounted to a serious procedural irregularity and criticised the "*unrestrained and immoderate language*" used by the judge "*which can only leave advocates seeking to present, on instructions, their cases to the court feeling browbeaten and impotent*". They formed this view after reading these (sample) exchanges took place"

'*Can I tell you how bitterly resentful I am at how much of my Saturday I spent reading this codswallop?*

HHJ Dodds warned the assembled lawyers, "You may want to put your crash helmet on," before saying (loudly):' *If she told you that the moon is made of green cheese will you say, 'Yes, S, no, S, three bags full S?'*— he continued '*For heaven's sake, in this day and age especially, just because the lunatic says, 'I want, I want', you do not have to respond by spoon-feeding their every wish.*

Lady Justice King called his "unrestrained and immoderate bombast" both "deplorable" and "unacceptable"
The case was remitted the case for re-hearing before the designated family judge for Liverpool, Her Honour Judge De Haas QC.

This appears not to have been an isolated incident. A firm based in Liverpool Jackson Canter also made an official complaint against him to the JCIO. There were another two complaints laid against him: 3 were made out, one was dropped.

[36] Ibid.
[37] http://www.familylawweek.co.uk/site.aspx?i=ed143386

Through the helpful offices of "Legal Cheek'[38] (a mine of useful blogging) I read 'In another case, Dodds slammed lawyers who wanted a young boy to live with his grandparents in Poland. Recalling Alan Partridge at his very best, he told them: *This is a game of chess, not draughts.* Finally, Dodds' extreme grouchiness meant that, in another family case, everyone in court "crumbled under his caustically expressed views". Dodds' reaction to this was to blast the mother for looking "upset and bewildered" by his rant.

The Judicial Conduct Investigations Office (JCIO) said His Honour Judge Robert Stephen Dodds' behaviour amounted to 'serious misconduct' in relation to three cases. A similar charge about a fourth case was dropped.

Lord Chancellor Michael Gove and Lord Chief Justice John Thomas agreed that Dodds' actions in three of those cases amounted to "serious misconduct".[39]

Despite being disciplined, HHJ Dodds will still be allowed to sit in family court sessions.

What can be commanded by respect should not be demanded by bullying.

I know of colleagues who have been gratuitously shouted at and undermined. It has happened to me. I have seen it in the High Court. I have been told of it in the County Court. I have received a number of emails from members of the Bar at all levels of call who have experienced judicial bullying and who have felt deskilled and humiliated as a result. No one has made a complaint: ever. the hash tag #metoo was taken up on twitter. It is not gender specific.

Ms Aspinal and Ms Reed are not alone in their experiences, they have simply been braver than most of us in speaking out about it publicly.

So, if it happens, why is it a hidden topic of conversation and not a matter that the person affected felt they could raise with the judge concerned?

Are those who complain being 'snowflakes' who should just take it as part of the cut and thrust of a challenging work environment? No. Judges have power, and with power comes responsibility. They have their judicial oath to live up to even when they may feel sorely tried (rightly or wrongly) by the inadequacies of those of us who appear before them.

ACAS defines workplace bullying as *"offensive, intimidating, malicious or insulting behaviour, an abuse or misuse of power through means that undermine, humiliate, denigrate or injure the person being bullied".*

One of my colleagues has put her mind to what judicial 'bullying' might mean in our work place: this is her list: Judicial bullying towards advocates often includes (but is not limited to):

– Shouting at them;
– Deliberately saying things to embarrass or humiliate them;
– Asking them to justify themselves in circumstances that are unfair;
– Calling them names;
– Calling into question their professionalism in circumstances that are unfair;
– Accusing them of incompetence in circumstances that are unfair;
– Using various facial expressions to demean or intimidate them;
– Refusing to give them time to formulate an argument or response in circumstances where it is unfair to them and their client to do so.

[38] https://www.legalcheek.com/2015/11/hhj-dodds-dubbed-britains-rudest-judge-after-series-of-kevin-the-teenager-rants/
[39] Hyde, J. (2017). 'Gratuitously rude' judge stays in post after conduct probe. [online] Law Society Gazette. Available at: https://www.lawgazette.co.uk/news/gratuitously-rude-judge-stays-in-post-after-conduct-probe/5052474.article

This behaviour goes beyond that of a judge being testy. An isolated example by one judge may well be accounted for because of the enormous stress of the role they perform or personal issues they are labouring under (judges are human too) but the impact of their behaviour , especially if a reputation is gained for repeat offences, has consequences for the advocate far beyond the confines of the court room: yet complaints are not formally raised, instead they are matters left in the air, with wounds salved over a drink with colleagues or by crying on the shoulder of a supportive partner at home.

Why is that? Most of the tweets recently suggest that barristers felt that if they complain it would hinder their career – certainly when they were starting off. This also correlates with the reasoning found in last year's BSB survey upon over 1,300 female barristers and how they perceive equality in the bar. In this survey female barristers' experience of harassment and discrimination came to light, however from the two-fifths of respondents who said they had suffered harassment – only a fifth reported it. The reason for this was fear of hindering career progression. It has been suggested that if the professional affected by the alleged behaviour can't take it up with the judge personally then they could do so with their Head of Chambers or Circuit who could raise it on their behalf.

Bullying by sarcastic comment, disparagement, rudeness, obvious disrespect: such judicial excesses undermine the client's confidence in the barrister and the barrister's confidence in themselves

There is, quite simply, no excuse for it. It undermines the confidence of the client in the barrister who represents them and the impartiality of the judge. It is embarrassing to witness for an opponent. It is humiliating for the barrister concerned. Most importantly: it affects the way in which evidence is then tendered and given because the judge controls the court and the atmosphere in it. Whether the tirade was directed at one person or another, it taints the process for all.

Those of us who work in the family courts know that the temperament of a judge affects the dynamic of the case as much as their skill. We can all name what judge we would want to appear before and those we would wish to avoid or retire from service.

I think there is real value in having 360-degree[40] feedback.

Judges, once appointed are in their role until retirement. Yet to be a judge is a step into the unknown in many ways as, unlike for example France, we do not train to be a judge, we train in careers such as the law to be a barrister or solicitor and the ranks of the judiciary are (largely) drawn from the ranks of practising lawyers. But the skills required to be a successful lawyer are not necessarily the same as those required to hold office as a judge. The JAC make careful appointments and the vast majority of our judges humble us by the quality of the work they do for the society they serve. Very few fail our high expectations of them. We have an able and committed judiciary. The many who perform their task well have nothing to fear from feedback. There are a few who sometimes fall below the standards expected of them but and there is a wide margin between expectation and error.

The very few who consistently fall below the minimum standard expected from them in the high office they keep deserve to be told that their reputation, and that of the law they were appointed to uphold and fairly administer, is suffering. 360-degree feedback, anonymous if necessary, gives the opportunity for reflection and change in a career that is theirs until the age of 65.

In conclusion

- The role of the judge is pivotal in the lives of the people who cross their paths in the court room.

[40] 360 feedback is a method of performance appraisal which gathers feedback from a number of sources: in this instance it could including peers, staff, more senior colleagues, advocates, even the parties

- We have an excellent disciplined, principled judiciary who strive to do the best they can for the public they serve.
- The demands placed on the judge are high and becoming all the more onerous because of unsupportable cuts in finding for the family justice system.
- The inexorable rise in unrepresented litigants is placing an almost unsustainable burden on court staff, the judiciary and the ability of the court system to deliver swift and fair justice.
- Becoming a full-time judge is becoming less attractive at the highest levels of court appointment: moral has dived, the pension no longer compensates for salaries that are lower in sitting than in private practice, vacancies in the High Court are going unfilled and lack of female and BAME candidates for many years has created a diversity gulf between the judiciary and the public they serve and should better reflect.
- Morale of the professionals who came into legal aid work as a vocation has plummeted.
- The ability to sweep up the unrepresented by pro bono work is becoming unsustainable sunder the weight of demand for legal advice and assistance.
- More than ever, the family court needs to be transparent so that the stresses it labours under can be understood by the public.
- The public deserve to see, through transparency or process and a fair, informed and engaged press, how much hard work goes into making an under-resourced system fit for purpose: the family justice system needs public ownership of outcomes through the sharing of information.
- *In an age of misunderstanding, which flows from misinformation, if judges contributed with greater vigour and clarity to an explanation of the issues involved and how the judiciary should approach them, then, at least if ignorant criticisms will not altogether be avoided, the ignorance of the criticism would be all the more apparent. The institution of the judiciary is surely, by now, of sufficient strength to withstand abuse while developing more modern and open channels of communication.*[41]'
- It is no longer acceptable for judges to be on pedestals: judges must be seen to meet high standards and to be held to them.
- The unspoken challenge is whether the system can survive as it is or if resources are to continue to deplete while demand rises, whether a new way of administering justice is required.

[41] Sir Alan Moses: see the Transform Project: Penelope Gibbs