

## **Evidence submitted by District Judge (Magistrates Courts) Nicholas Crichton**

### **INTRODUCTION**

1. I am the resident DJ(MC) at the Inner London Family Proceedings Court, Wells Street. I am the only DJ(MC) in the country who sits solely in family proceedings, and have been so for more than 10 years. I also sit as a Recorder holding both private and public law tickets.
2. I have had sight of the response of the Legal Committee of the Greater London Family Panel. I agree with that response and would wish to be associated with it.
3. I welcome the Green Paper "Parental Separation: Children's Needs and Parents' Responsibilities". Since the passing of the Children Act 1989 the concept of interdisciplinary training has been developed. Judges have had the opportunity to learn from other professionals in the field of child development. Among other things we have become keenly aware of the needs of children to maintain significant relationships with both parents after parental separation. Unless there are significant and identifiable reasons to the contrary, it is crucial to the emotional well-being of the adolescent and young adult that they shall have had the freedom to know and to love, and to know that they are loved by, both of their parents.
4. It is important that courts should deal with private law applications against the background of this knowledge. As the Green Paper points out, it is the one in 10 more difficult cases that come before the courts. It is often said that the courts are not the right place for these problems to be resolved. I agree. However, every society has to have a mechanism for the resolution of disputes between its citizens, and in most societies it is the court system. Mr Justice Munby has been quoted as saying that the family justice system is failing children. I believe that it needs to be acknowledged that the first responsibility for meeting the needs of children lies with the parents. This is not to say that the family justice system has no responsibilities, and it is clear that in some cases the system has continued to fail children and their families.

### **SPECIALISM**

5. There is a general acceptance that "judicial continuity" is important. If the parties know that each time they come to court they will meet with the same judge who will take the case on from where he left off on the last occasion, I believe that would build greater confidence in the system. Sadly this is extremely difficult to achieve. As the resident DJ(MC) in my court I am able to provide that continuity in a significant number of cases and I believe that some successes have been achieved.
6. For some time I have been urging the appointment of more specialist DJ(MCs) to sit in the FPC. The problem is that historically DJ(MCs) have been appointed to sit in crime. In London approximately one in three has obtained a family law "ticket" and sits in the FPC for six to eight weeks per year. I would prefer to see full-time specialist family DJ(MCs). The FPC is a part of our jurisdiction, and I believe that it deserves a more specialist and professional approach. I know that there are many family law practitioners who would wish to sit in the FPC, but are put off by the requirement to sit the majority of the time in the criminal courts.
7. When I sit as a Recorder I meet many Circuit Judges who are extremely conscientious and committed to family work. I also meet others who are not suited to the work and who

would prefer not to be doing it, but who have been pressured by their court managers into obtaining their family law tickets. I believe that the skills needed for family law are very different from those needed for other branches of the law; and that it is therefore essential to recognise and encourage specialism, and to ensure that the responsibility for sitting in family is entrusted only to those who have the particular interest and commitment.

8. I believe it to be important to minimise the adversarial nature of family court proceedings. I believe contested adversarial hearings to be contrary to the interests of the family, and specifically the children. An order imposed by the court after such a hearing is bound to make at least one party unhappy and resentful. That resentment will almost inevitably be fed into the lives of the children. Better to assist the parties in arriving at a compromise which offers something to both and diminishes feelings of resentment. I chaired the working group which reported to DCA/DfES in October 2003. That report has given rise to the Family Resolutions Project just starting at three court centres, including my own. It was the hope of the working group that the culture in which these disputes are decided could be turned around. Rather than courts deciding whether or not the children should have contact with the non-resident parent, the starting point should be the assumption that unless there is good reason why this should not occur the children should see the non-resident parent for approximately half of their free time, ie alternate weekends and half of all school holidays. Of course different working and geographical situations might make that difficult for many parents, but the point is that this should be the starting point when deciding what is in the best interests of the children. I am aware that there are many conciliation initiatives going on in courts around the country.

9. One issue which arose during the planning for the Family Resolutions Project is whether or not a court can or should direct parents into a programme designed to avoid contentious proceedings. This is routinely done in America, but in this country we are perhaps reluctant to be so prescriptive.

## **ENFORCEMENT**

10. One problem is enforcement. Not without reason fathers' pressure groups argue that courts do not enforce orders when mothers fail to make children available in accordance with a court order. However, judges will always be reluctant to send a mother to prison or to fine her. It is difficult to see how sending a mother to prison can be in the best interests of the child—the child is deprived of his/her mother for whatever period, and thereafter will always be in a position to tell the child that his/her father had her sent to prison. It is difficult to see how fining a mother is in the best interests of the child—most families we deal with are in financially straitened circumstances and this would merely add to their difficulties. I wonder whether it may be possible to devise a scheme where mother might have to serve a number of hours community service (preferably child focused) on a Saturday whilst the children have contact with their father . . .! We need to search for more imaginative ways of dealing with obstructive mothers

## **DELAY**

11. Another major problem is the issue of delay. Children cannot wait for courts to work through over-loaded lists before making decisions in their lives. It is the responsibility of the court system to hear a case at the optimum moment in terms of the information having been gathered and the case being ready for hearing. It is important to keep in mind that two months represents 1% of the child's minority. If a court takes six, or even 12 months longer than it should to resolve a case, that is 3% or 6% of the child's life which has been

wasted and which cannot be given back. It is therefore the responsibility of the court system to hear cases as and when they are ready. I believe that a specialist, committed and experienced judiciary would have the capacity to get through the work more quickly.

Nicholas Crichton

District Judge (Magistrates Court)

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