

TALK TO
FAMILIES NEED FATHERS
ANNUAL GENERAL MEETING
By Richard Sax, Consultant – Manches LLP, Solicitors

Sunday 30 September 2007 at 12noon

Thank you very much for inviting me to talk to you today. I have a history in working with Families Need Fathers. Trevor Berry invited me, with Donald Dewar, to speak at your AGM in about 1989, shortly after I ceased to be the second Chairman of SFLA (now Resolution). Trevor and I got on well, not least because we shared a passionate belief that children need two parents and benefit from the best possible relationship with both their parents. Things were not easy at that time. Families Need Fathers had a bogeyman image for quite a few family solicitors and quite a few members of FNF complained about aggressive and unhelpful solicitors who did not follow the SFLA Code of Practice. There was merit to a degree to both those complaints about some members of our respective organisations. Both our organisations were still finding their feet at that time, although growing substantially. The Children Act had not yet come into force and most of the judiciary were still very "traditional" in their view of men and women and their roles in relation to children when dealing with custody and access disputes, as they were then called. The Court Welfare Service was still a branch of the Probation Service, with their officers rotating between probation and family law work every three years. There were, of course, many good Court Welfare Officers but their training was lacking and there was no career structure specifically aimed at family law matters.

Nearly twenty years later, we are looking at a very different scene. Your organisation has grown from strength to strength. The pastoral care which it gives to parents is clearly outstanding. Your provision of McKenzie people to assist litigants in person is very helpful, not only to them but to the Court. When I am sitting at the Principal Registry and someone is acting in person, which is very frequently these days, I breathe a sigh of relief when they have a sensible and supportive McKenzie friend. You have been very successful in building bridges with government and with other important players in the family law world and in beginning to influence policy. Your literature and your McKenzie Newsletter are exceptionally good and helpful reading. It is not appropriate, today, for me to be outlining how Resolution has changed but, again, it is a much more substantial, influential and well-run organisation.

However, all is not rosy in the garden. Reform moves slowly in this country. There remain many unsatisfactory elements which prevent the achievement of justice for

children in being able to have the best relationship possible with both parents after their separation. I intend in the rest of this talk to highlight the problems as I see them and what is being done and what needs to be done to achieve our objectives. In particular, I will deal with CAFCASS, the approach of the Courts, including openness and domestic violence, if I have time I will talk about family law solicitors and, finally, how I think is the best way to push for further change.

In considering all of this, we have to look at the context in which we all live and work. Many gender stereotypes still prevail, despite the fact that many more women work and many more men play a full role in bringing up their children. There is a statistic frequently quoted which is that only ten percent of the parents of separated children make applications to Court. This is said to be evidence that in an area where emotion and underlying conflict can be very high, only the most troubled and angry go to Court. All the others manage to reach some kind of agreement, either themselves or by the use of mediation. I think that this is a generalisation. I am sure there are quite a few parents who do not apply to Court, either because they cannot face it or because they cannot afford it or because they think it will make things worse for the children not better. Equally there are those who do apply to Court who are not the most troubled or the most angry but where the communication between them and the other parent has broken down and no-one has been able to restore it.

CAFCASS

I described earlier the Court Welfare Service of the late 1980s. The implementation of the Children Act enhanced the role of this Service and the creation of CAFCASS 5 years ago is and will do much more in the future for children and their parents. CAFCASS has had substantial teething problems. The merger of the 200 or so local authority Court Welfare Office Teams and all the independent social work Guardians was implemented in too much of a hurry because of the need to establish a new Probation Service. Following a parliamentary report, the first Board were invited to resign. There was under-funding. A great idea got off to a bad start.

CAFCASS is now moving in the right direction as fast as it can. Our vision and our values are as follows: -

OUR VISION

1. Put children first.
2. Keep children as safe as possible.

3. Ensure each child has a voice that is heard, understood and respected in the family Courts in a way that is consistent with and responds to each child's wishes, competence and understanding.
4. Start with the child and stay with the child, throughout the life of cases.
5. Be clear about the needs, wishes and feelings of individual children in family Court cases as the core business of CAFCASS.
6. Make a contribution to securing the safest, high-quality outcomes possible for each child and evaluate this contribution after a case is closed.
7. Respect the importance of family life and family members for each child.
8. Respect the diversity and individuality of each child and family.
9. Through the organisation, keep the focus on frontline services.
10. Maintain our independence and objectivity at all times in all circumstances.

OUR VALUES

Child focus – engage with children and families so what we do is determined by their needs.

Equality – we believe all children and young people have equal worth and equal rights.

Honesty and openness – measure and account for what we do so that our performance is open to scrutiny: welcome feedback on our work and provide a transparent procedure for complaints.

Realism – seek the best we can for all the children and families we serve within the resources available to us.

We are spending as much as we possibly can on training and we are re-organising our structure to make us leaner and more efficient and focused on front-line delivery.

However, we have to deal not only with private law cases but also with public law cases. Public law demand, that is care and adoption cases, increases every year. Because that process involves the state taking children away from their parents, it requires priority above private law and private law suffers accordingly. Last year, CAFCASS saw some 80,000 children in relation to applications before the Court. Split as to about 12,000 public law cases, and 60,000 private law cases. In private law cases, there has been a substantial change following the President's Private Law Programme. The purpose of this has been to introduce dispute resolution schemes in family Courts throughout the country in an effort to avoid contested hearings. This involves working directly with children and with families. The focus is to follow research that has shown that ongoing conflict within a family is damaging for children. Last year, CAFCASS practitioners participated in 26,344 dispute resolution meetings, spending 57,880 hours on those cases. This was an increase in time spent on early intervention of 33.6%. Around 60% of our interventions achieved full or partial agreement. As you will know, when a child is involved in a particularly complex and/or protracted private law case, he/she can be separately represented by a CAFCASS Officer under Rule 9.5 of the Family Proceedings Rules. Many of the most difficult cases are resolved in this way. Last year CAFCASS responded to a total of 1,206 cases, which was an increase of 16.5%.

CAFCASS' involvement in Family Assistance Orders after an Order has been made, in order to provide social work support to families experiencing difficulties after separation/divorce amounted to 351 cases last year. We hope that when the new provisions of the Children and Adoption Act come into force and Family Assistance Orders can be made without the consent of both parents, that our work in this respect in supporting families to make their arrangements work will increase.

CAFCASS is increasingly involved in partnership with other organisations, including Families Need Fathers. In essence, what we are seeking to do is to transform our services and modernise our practice in order to represent children and their interests. One of our innovations has been to set up a children's Board. They have fed in important ideas and criticisms about the position which they find themselves in, both in public law and private law proceedings. These have been important in informing our strategy and our practice. CAFCASS is committed to the idea of collaborative parenting and a proper balance between both parents and parenting time. It is committed to early interventions and to adding value to every one of its interventions. The needs, wishes and feelings of children - which it is CAFCASS' job to ascertain and to convey to the parents and to the Courts, is of the essence in assisting parents to focus on their children and to realise that re-fighting the fights of the marriage or relationship and its breakdown is very

detrimental to the welfare of children. What is important is to involve the children in an effort to get their parents to agree a sensible way forward through a parenting plan or whatever. There has sometimes been said to be a conflict between the CAFCASS approach focusing on each family and each child, rather than on norms of parenting and contact. However, I believe this is more a supposed conflict of philosophy rather than the reality. The reality is that although the needs of children in respect of their parents differ at different ages and in different life circumstances, nonetheless, there are common threads and feelings which a properly trained CAFCASS Officer will bring to the consideration of the particular family.

Again, the focus on equality of time between parents continues to engender debate. My own view is that collaborative parenting is what is important and focus on particular children. That may lead to an equal sharing of time or an unequal sharing of time. It depends on the particular case. It must enable equal parental input on important issues, such as schooling. The children must feel comfortable with it, as well as the parents.

If, regrettably, agreement cannot be reached through early intervention or mediation, then CAFCASS Officers have their part to play in the Court proceedings. They must see the children and they ought to see the children with each of their parents and seek to do so. Their report to the Court must be succinct and well-argued and give advice to the Court, as they are the children experts on whom the Court relies.

The Courts

I am sure that everyone will agree that the Court is not the best place in which to sort out and achieve the resolution of parenting conflicts. Communication is very difficult in the formal setting of a Court. The adversarial process, including the making of statements criticising the behaviour of the other parent, makes the achievement of collaborative parenting more difficult not less. The giving of a Judgement and the making of an Order, however sensitively crafted, gives the feeling of a winner and a loser. However detailed an Order may be, it can hardly cover every eventuality and there are always problems with those who are determined to frustrate any Court Order. Enforcement is a real problem.

However, if appropriate, the Court can seek to persuade the parties to use mediation or by the use of an early intervention conciliation appointment with CAFCASS followed by two or three review hearings enable the parents to establish an agreement which works and supports that agreement while it is in its infancy. If proceedings are necessary, we need a well trained judiciary with the support of a well-trained CAFCASS Officer. Judicial

training is improving and there is about to be a change in the way in which it is delivered by a greater use of distance learning. In my view, there needs to be more research and more support by family law experts in explaining to Judges what is best for children. I see that as the only way in which one can move from stereotypical Orders of alternate weekends and half the holidays or less, a reluctance to order mid-week contact because it is disruptive and to overcome the difficulties which arise with babies and younger children and the uncertainties which mothers have that the father cannot care for such a young child, to whom the mother is firmly bonded. I believe that there is a need for judicial assessment; at the moment only Deputy District Judges are assessed but there is a proposal from the Judges Council to increase this further.

A continuity of listing before the same Judge: This is a nightmare in multi-Judge Courts such as the Principal Registry (where I sit) where there are 22 or so permanent Judges and 40 or so Deputy District Judges. The lack of resources for the Court Service in the supply of Judges is such that there are lengthy delays in listing hearings, which is extremely detrimental to the interests of the child and a parent who have not seen each other for a long time. I believe that some changes in listing could be made to improve continuity but it would involve an input of funds from government which are just not forthcoming.

Then there is the law itself. Direction as to how we interpret the Children Act, which is extremely wide in its drafting, have to come from either the High Court and Court of Appeal or, indeed, the House of Lords. Not only does this take time but the kind of cases which reach the Appeal Courts are atypical. Joint residence Orders is an example of how the law has moved positively.

Every Judge will agree that there should be a proper balance between the two parents in parenting time. However, I do not think that the Judges have yet moved to a position where departures from equality need justification rather than vice versa. I know that is your aim but I think there needs to be further research and reasoned persuasion to show that equality is practical, sensible and is in the best interests of the children, rather than sacrificing them to a principle. The principle is and should be collaborative parenting and a proper balance in parenting time, rather than an insistence on having equality.

The Openness of the Family Courts, Confidence, Confidentially, Privacy

My initial stance was that justice must be seen to be done and that, therefore, there should be openness in order for there to be confidence in the family justice system. This was partly fuelled by what I believe to be the unjustified criticism of the judiciary, that

they would behave differently in public to the way they behave in private. However, assessment is needed as I have already said. Also, the inspectorate OFSTED should also report independently on the judiciary in a public report. I do not see that this runs contrary to the independence of the judiciary.

However, and apart from that, and having heard many views on the subject and, in particular, the views of the CAFCASS Children's Board and the views which 200 or so children put forward to the Family Justice Council in response to the government's Green Paper, I think we must take great notice of what these children say. They have all been the subject of proceedings – some in private law disputes and others in care proceedings. They speak with maturity and are knowledgeable about the issues in this debate. They are vocal about the importance to them of ensuring that people who are not connected to their case should not be allowed to spectate, let alone to report on the intimate proceedings in which their families are centre-stage. In particular, they are very cynical about the role of the press. They believe the press is only interested in sensation. They are not surprised that although the press have hitherto been allowed to attend and report in the Family Proceedings Court, they have virtually never done so. There is a need to balance these two important factors. The new consultation paper places its emphasis squarely on the importance of information coming out of the Courts rather than people (or the press) going in through the doors of the Court. It is now suggested the press and media organisations should not be permitted into Court as of right, at any level of Court, but they will nonetheless be able to apply to attend proceedings and the Judge will have to decide this on a case by case basis. I have to say that seems to me part of to be the right approach, provided that whenever it is appropriate Judges do allow people or the press into Court. There should be a statutory checklist to assist Judges in the exercise of their discretion in order to promote uniformity of approach and the Ministry of Justice now seems to approve that suggestion. Anonymised Judgements, or at the least a summary, should be provided as a matter of course not only to families but to the children involved; together with the public in general in certain classes of cases, such as leave to remove, no contact, final Orders in public law cases, final Orders in relation to contested issues of religion, culture or ethnicity, cases involving significant human rights issues and cases where the Court has had to decide between medical or other expert witnesses where there were significant differences of opinion. This would need to be piloted and there are substantial costs implications.

Parties should not have unnecessary restrictions on them as to whom they can disclose information about their case.

The identity of children should be protected, both during and beyond the end of proceedings.

Domestic Violence and Abuse

This is undoubtedly a problem in private law cases. It arises because of the emotional context underlying the conflict and the fact that this gives rise to troubled, angry and unreasonable behaviour. We have all been involved in cases where there has been domestic violence and abuse, sometimes in the presence of the children, and we have also been involved in cases where allegations of domestic violence or exaggeration of relatively trivial events has taken place with a view to frustrating Orders for contact. There is a much greater focus on domestic violence and abuse and the importance of safeguarding of children since the substantial publicity given to child deaths and domestic violence and abuse in the press and in political circles. This, for example, has resulted in non-molestation Orders in family law proceedings becoming part of the criminal law process as each Order now has to be served on the police, whose duty it is to enforce it. It is no longer open to the family Court Judge to attach a power of arrest. As from 1 October 2007, it will be the obligation of CAFCASS to make safeguarding checks with the police and local authority in every appropriate case. There is now, therefore, an emphasis on caution; not only in the making of interim Orders but also in relation to the making of Consent Orders. This may lead to more Orders for hearings of domestic violence allegations which, although they may be effective and helpful in establishing the truth, the seriousness and the relevance to child Contact or Residence Orders, will inevitably result in further delays in Court hearings which of itself is damaging. This caution does not mean that there is a presumption that the allegations are true. Nor should there be a presumption that domestic violence and abuse is invariably male on female. Particularly non physical abuse may well be female on male. Men are reluctant to admit to physical abuse on them by the other sex. The problem is complex, it is, however, an area where the judiciary have to be cautious as do CAFCASS officers and there is a need for training and education to make sure the right decisions are made.

The Children and Adoption Act will bring in the ability to make contact conditions, such as attending Anger Management courses. That is helpful but, at the moment, there are not enough courses properly funded. Secondly, there will be additional remedies to enforce Contact Orders. At the moment, committal to prison or change of residence are the only Orders of last resort. Judges should not hesitate to use these in appropriate cases but they do have their disadvantage and, in particular, disadvantages for the

children. The new remedies may provide more sensible ways of persuading recalcitrant parents to obey Court Orders. Again, there needs to be judicial and professional training.

However, the question always arises in my mind as to how the parents got to this appalling stage in their relationship. There are undoubtedly people whose personalities or relationship history are such that they will be violent or vindictive or controlling and this applies to both sexes. They need therapeutic help but that needs financial resources and the willingness to undergo it. There are other cases where the deterioration in the relationship has been gradual or is predictable, for example where one parent takes another partner. I am sure that in all those cases, sensible advice, careful preparation, patience, respect for the other party's point of view and, above all, focus on the children could avoid much of the difficulties and many of the cases we see in Court.

I have noticed from Families Need Fathers' literature and indeed from your Guide to Shared Parenting "For the Sake of the Children" that you are very conscious of these factors. In a sense they are early intervention but early intervention much before an application to the Court. They are more akin to family counselling or family therapy. As a result of recent research, we better understand the detrimental impact of domestic violence and abuse upon children. However, I do not think there has been enough focused research on how to help parents to avoid these situations. The separation needs to be managed. There needs to be communication. There needs to be the ability in the widest sense not to hit back and to manage one's pain.

Conclusion

I think it would be presumptive of me to advise FNF on how it should achieve its aims, even though John Baker has invited me to do so. I say this because I feel that you are moving so much in the right direction already and it is really a matter of steadily and firmly capitalising on what you are already doing. In particular there is a need to be logical and reasonable and to back up your arguments with effective research. That research should either be research funded by you or making use of research funded by others. Far too little focused research is carried out in the family law arena and funded by government.

You should continue to make alliances. You should continue to collaborate with like-minded family organisations, not just lobbying organisations but, for example, with CAF/CASS as you are already. I think you should continue to avoid slogans which can be misleading and lead one down the wrong path. Nobody can argue with the right of

children to have full and free relationships with both parents after their separation and a proper balance between the two parents in parenting time unless there are good reasons against this, such as safeguarding or the needs, wishes and feelings of the particular children.