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## Resolution National Conference 5 April 2008

### Keynote speech delivered by Mr Justice Coleridge Family Life - Family Justice - Fairness

It is an **honour, a privilege** and above all a **pleasure** to be asked to talk to you all this morning. That may all sound like a most terribly clichéd start to what I have to say, and I will try and avoid them from now on, but, unusually for clichés, I really mean it.

It is genuinely a **pleasure** because, once upon a time, some of you made the mistake of instructing me, or were on the other side, in cases I was in, and I crossed paths for one reason or another, with a great many more. So many are still friends and I feel I am amongst friends and also kindred spirits. Thank you very much for inviting me.

It is a **privilege** because to be given the opportunity to speak to so many of you at once in circumstances where, for once, you cannot answer back (at least not for a few minutes) makes a change.

It is an **honour** because, for reasons upon which I intend to expand a little in a moment, I regard this organisation as one which is currently of the greatest importance, not just to the proper administration of the family justice system but to the support of the whole fabric of our poor and increasingly fractured society.

What I have to say today, I have to emphasise, represents entirely my own views. I have not discussed this talk with the President let alone shown him a copy in advance. (I did not want to do so for fear that he might ask me to tone it down a bit). And just at the moment I am not in the mood for toning things down.

As those of you who have done FDRs in front of me will know, I have been at the coal face of family law for now a total of 37 years. I say that because I always inform the litigants at the FDRs of this fact because I think it helps them to know that when I put forward my view as to outcome it is informed by that many years experience in the field.

So I am talking from that **length, 37 years, of experience**.

And, I also have **breadth of experience** at every level of the system. I may have been properly described as a fat cat in the last few years of practise (or at least well rounded) but I can assure you that over the years there is no type of family court which I have not addressed and on many occasions. And, as with many family lawyers, clients have been drawn, over the years, from across the entire social spectrum, from billionaires to council house tenants. Aristocrats, industrialists, professionals, MPs, celebrities and hundreds from the less exotic walks of life.

I have been a judge now for seven and a half years. At present, **I now look after the family courts on the western circuit** (or the south west region as it is now rather boringly described in official language), as Family Division Liaison Judge. That now covers, since unified administration in 2004, all family courts from Hampshire to Cornwall, from Winchester to Truro. And at all levels, from FPC upwards.

So again I do know the scene from this end of the telescope as well. But of course, I am not alone in this, most of my fellow judges could describe a similar length and depth of

experience. And there are many in this room who have just as much knowledge and experience.

**Now I am afraid that the time has come for family judges to speak out publicly in protest at the way in which the Family Justice system in this country has been and is being mismanaged and neglected by government.**

Let me emphasise that I am not here to make party political points. When I speak about **government I mostly mean government with a small "g"**. That is those in government in the past, those in government now and those who would aspire to be in government. Obviously those who have been in government for the last ten years must take their fair share of any criticism.

And when I say **the family justice system** I do not just mean the forensic process involving lawyers, judges and courts. I mean the whole range of professional expertise and experience which is routinely required and deployed in the preservation of family life and resolution of family disputes. Local authority Social workers, adult and child mental health specialists and the Child and Family Court Advice and Support Service (or CAFCASS as we more usually refer to it as). All, along with the lawyers and courts, are as important as each other and have an essential part to play.

Traditionally **Judges have kept their mouths shut** and not entered the arena of the administration of justice. That was for two reasons; firstly, things on the whole were tolerably well managed, resources were adequate and the work load was manageable. Secondly, judges did not really involve themselves nor were they required to involve themselves much in the administration of the system. But that has all changed beyond recognition in the last ten years and especially since the recent constitutional changes. The workload increases year by year and a great number of us are now fully involved directly or indirectly in the actual admin of the courts and in devising systems for the increased efficiency of the courts and the throughput of cases. Now, during a family judge's career he or she can expect to have a direct responsibility for a court or a circuit for a lengthy period. Thus, it follows, it seems to me, that in these new circumstances, we are not only entitled to have a view, gained from direct daily experience, but a duty to speak out and express it publicly and, if necessary forcefully, when circumstances demand it.

And **in my judgement the circumstances do now demand it**. Indeed we could and should be criticised for remaining silent or being mealy mouthed, for far too long. For there is a depth of frustration and despondency amongst all those involved in the family justice system at all levels, and the family judiciary in particular which is, in my experience, unprecedented and palpable.

Consider for a moment **what the circumstances of our society** are about which I now speak. The circumstances are none other than the state of **family life** in our land, the very backdrop for the work of all those involved in the Family justice system. Its very stock in trade.

For as long as history has recorded these things, stable family life has been co-extensive and co-terminous with a stable and balanced society. Families are the cells which make up the body of society. If the cells are reasonably healthy, the body can function reasonably well and properly. But if the cells are unhealthy and undernourished, or at worse cancerous, and growing haphazard and out of control, in the end the body succumbs. The disease may be hidden from view until very late in its progress. And this may make the situation when it is discovered that much more difficult to control and treat. But it is there even if invisible.

Put it another way, if the house is riddled with dry rot, the effects may not become apparent for a long time but in time the whole, interior, walls and wood will crumble to dust and one is left with a useless shell. And if the rot affects the bulk of houses in the town in the end the town is destroyed.

These may sound like dramatic images. And those who would shut their eyes and minds to the obvious will say they are the product of a professional who has spent too long involved in

the business of family breakdown. But I suggest they are apt for the situation large tracts of society now finds itself in. The disease and the rot are spreading and are out of control,

**In some of the more heavily populated urban areas of the country Family life is, quite frankly, in meltdown or completely unrecognisable .** Many of us in this room know it from our own knowledge and from our experience directly or indirectly through our work. It is on an epidemic scale. In some areas of the country even including the more urban parts of the sleepy west in which I operate, family life in the old sense no longer exists. I am not talking about some halcyon picture of Husband , wife and 2.4 children once recognised as the national paradigm for families. I am talking about simple, ordinary family life where children are brought up with a normal daily routine of getting up, eating, going to school and returning to reasonably ordered home, presided over by a reasonably secure relationship. An environment of 2 parents who stay together if not for all then at least for most of their minority.

I am not knocking single families. Single parents often do a fantastic job but a great many, perhaps, through no fault of their own, do not. A large number of families now consist of children being brought up by mothers who have children by a number of different fathers none of whom take any part in their childrens' lives or support or upbringing. These are not isolated, one off cases they are part of the stock in trade of the family courts . Day in and day out, we see these families in the proceedings brought by local authorities for care and or adoption orders.

But it is not just the overcrowded urban environment which manifests these problems on a huge scale and which often results in intervention by the Local authority. The increasing incidence of family breakdown is at all levels of society. Every level of society from the Royal family downwards is now affected.

So I suggest the general collapse of ordinary family life, because of the breakdown of families, in this country is on a scale, depth and breadth which few of us could have imagined even a decade ago.

I am not going **to bandy statistics because** they are either unavailable or notoriously misleading and, if recent government statistical data is a guide, probably inaccurate and so unreliable. In any event the real data from broken families is not available because it does not exist. Obviously I am not just talking about divorcing couples because marriage is increasingly not the norm. We have those statistics .....and they show that levels of divorce remain at a constantly high level.

No, I am talking about the wholesale breakdown of ordinary family life in households of our land. Parents (whether married or not) providing no consistent parental influence or authority over their childrens' daily lives and separating as a matter of course and as part of the ordinary experience of children as they grow up. It is a depressing but, I suggest accurate picture.

And I am talking, am I not, about the ordinary experience of everyone in this room in their private, their family and in their professional lives especially over last 20 years. We may not have experienced the terrible trauma and stress of family breakdown directly ourselves, but I am happy to bet that there is not a single person in this room who has not experienced it at second hand either with other members of their family or close friends or work mates.

And, of course, as a **direct result and reflection of that social phenomenon, consider the increase in the workload of the family courts in last 2 decades.** The family courts used to be the minority occupation of the courts, FPC, county court and High Court. Indeed when the family high court judge went on circuit he finished the family work and then helped out with the civil or criminal work. Those days have long since gone. The family lists never even begin dry up. Instead more and more cases have to be pushed further and further down the system to ensure that all, what used to be thought of as the High Court work, gets done.

Fortunately we have a cadre of specialist family judges at all levels who do the work with exceptional skill, care and dedication so the system is not suffering through lack of skill. That is not where the problem lies.

So, along with crime, family cases now dominate the picture. And this is hardly surprising as they are, no more or less than, two sides of the same coin. Up and down the land, day in and day out, thousands of families are trooping through hundreds of courts in front of hundreds of judges seeking their assistance to resolve family disputes. High Court. County Court, Family proceedings court. High Court judges, Circuit judges, District judges and magistrates. All are inundated with cases. Thousands upon thousands of children are involved. Both in the public law Care system because their parents cannot cope (or worse are guilty of abusing their own or their step children) and in the private law system because their parents cannot sort out their disputes when they separate, without some help from the system.

It is a never ending carnival of human misery. A ceaseless river of human distress. For those of us involved in it on a daily basis it is very demanding and at times stressful work.

And the effect of family breakdown on the psychological health of the parents and, even more importantly the children, both in short and long term is well researched and documented. What the long term effects of family breakdown on the present huge scale, on the health and functioning of the nation, will be within the next 20 years is impossible to predict. But it is inevitably a downward spiral so far as the maintenance and prolongation of family life is concerned.

Surely, we all know this and surely it is time we all faced up to it and more importantly did something about it before it is too late.

Without being in any way over dramatic or alarmist **my prediction would be**, looking back and seeing where we have come from and projecting forward on the present trajectory, that the effects of family breakdown on the life of the nation and ordinary people in this country will, within the next 20 yrs be as marked and as destructive as the affects of global warming. We are experiencing a period of family meltdown whose effects will be as catastrophic as the meltdown of the ice caps. For what is the point of pouring resources into the physical protection of society if its mental health is so damaged and undermined that life for many is so miserably unhappy that it is hardly worth living anyway.

It is, I suggest, as big a threat to the future of our society as terrorism, street crime or drugs. But far more insidious. It will be more destructive than any economic decline caused by international market or financial movements triggered by mismanagement by financial institutions.

**What is certain is that almost all of society's social ills can be traced directly to the collapse of the family life.** We all know it. Examines the background of almost every child involved in the public law Care system or the youth justice system and you will discover a broken family. Ditto the drug addict. Ditto the binge drinker. Ditto those children who are truanting or cannot behave at school. Or indeed any of the other ills which are so regularly trumpeted by the media as the examples of national collapse. **It always come back to a broken family or the complete lack of any stability within the family.** Scratch the surface of these cases and you invariably find a miserable family, overseen by a dysfunctional and fractured parental relationship or none at all. I am not saying every broken family produces dysfunctional children but I am saying that almost every dysfunctional child is the product of a broken family.

So, at the risk of sounding too Jeremiah like, I suggest that family life in our society is on a steep downward trajectory and urgent and comprehensive action is required.

**And what, I ask, is worse, from the child's point of view, than family breakdown ? Badly managed family breakdown.** There is universal acceptance nowadays, and tons of pages of research which support it, that if family breakdown and parental separation cannot be avoided then the better it is managed and handled the less the emotional, and

psychological fallout on the individuals concerned especially the children. Behind every contact dispute is mismanaged parental separation. One or other of the parties feels aggrieved at the financial or other effects of the separation, war breaks out, the children get caught in the crossfire. Both sides blame the other.

**And what is government doing to recognise and face up to the emerging situation ?**

What is it doing to halt the decline or even reverse it. The answer is; very little and nothing like enough. It is fiddling whilst Rome burns. Sure Start is a start but no more. High sounding declarations about taking children out of poverty are all well and good but where are the necessary investments in research and support for family life. I am not talking about tinkering with tax rates for married couples. That is irrelevant and ineffectual window dressing. I am talking about imaginative experiments and well funded programmes.

And in the shorter term, far from helping people to go through the process in a civilised way, it is allowing the **whole family justice system to be starved to death**. And this system is all that stands at present between the present dire situation and social anarchy, The governments treatment of the system is nothing less than death by a thousand cuts.

At present the family justice system is not looked upon by the government as one large whole and vital social resource. and so given a proper priority in the allocation of resources. Instead, so far as the Ministry of Justice is concerned, it seems to be treated as little more than a rather irritating item of "any other business". Way below the building of prisons or the criminal justice system.

It is surely that attitude which has led to the recent administrative fiasco involving the closure of the Queens Building in London. That building, as you all know, is the heart of the Family Division of the High Court where 16 of most important family courts in the land are situated ie in the Royal Courts of Justice. It was shut down last year without proper planning and without proper supervision so that London is presently critically short of family courts. They have been shut now for 9 months and are predicted to remain shut for at least another 18 months whilst nothing by way of serious work is expected to start for another 6 months. And all at a time when family courts are desperately needed.

It is part of the same attitude which fails to recognise the singular importance of the family justice system to the functioning of our society. It is quite unlike any other type of litigation, involved as it is with the very heart of the litigants life. I always remember asking Mr Justice Munby when he was appointed, why he had chosen to sit in the family division rather than the chancery division, where he was equally well respected and in demand. He answered my question with a question. "Which is more important," he said, "squabbles between greedy company directors or business partners or removing children from their parents or sorting out the problems of families at war?" Of course the thrust of his questions was right. It is a no brainer.

What seems always to be forgotten nowadays is that, for reasons I have already highlighted, far **more members of the public are likely to be involved in the family justice system than any other part of the national court or justice system**. Those who indulge in crime are a very small minority of the population. Ditto those who are involved in the civil courts. Those who find themselves in the family justice system are a large part of the community and by and large they are ordinary, frequently tax paying, decent members of our society who now find themselves caught up in family breakdown.

So they turn to the system (which is paid for by their taxes) to find it overstretched to the point of collapse and acutely and chronically underfunded at all points. Delays are rife in every part of the system through lack of resources. And delay, as we all know, exacerbates all the problems and compounds the stress.

And, just to make matter worse, **the present substantive law of divorce**, and financial division and the law relating to the property of unmarried couples (other than gay ones)

administered by the courts is out of date, hardly fit for purpose and crying out for a thorough overhaul.

**In this situation there has never been a greater need for the public to have access to a lawyer with specialist family law and family justice experience than now.** They are as vital a commodity in our national life as the local GP. Indeed their tasks are not dissimilar. When a family is going through crisis whether it be medical or psychological or legal, caused by family collapse the first port of call is and should be the local GP, if it is medical, and the local family lawyer, solicitor and barrister, if it legal. These are not the fat cats much beloved or hated by the media. They are a vital front line social service serving the community at local level, sorting out the problems of local people when their families fall apart or the social services move in to rescue a child at risk. They are just about making a living but precious little else.

#### **SO WHEN WE LOOK AT THE FAMILY JUSTICE SYSTEM WHAT IN FACT DO WE FIND ?**

**In the field of private law, ie disputes within the family, we find Legal Aid, once a well resourced and efficient system available to all who needed it, now to all intents and purposes available only to the very poor and not the majority of the ordinary tax paying public.** The system is simply withering away. Of course the government will trumpet the increase in the amounts now spent. But this is almost entirely accounted for by the very high cost, long and complex terrorism and fraud trials. For the ordinary, tax paying member of the public on the average wage, legal aid is virtually non-existent in family cases; killed off by government by the simple expedient of reducing or not increasing the financial threshold to such an extent that almost no one qualifies. So a system once the envy of the world is now largely history.

A direct consequence of this removal of publicly funded legal aid, is an upsurge in the number of litigants in person coming to court to sort out their family's future without the help of a professional and at a time of the greatest possible stress in their lives. This inevitably leads directly to the lengthening of cases, the reduction in the number of negotiated out of court settlements and so delay. The Macartneys are not the only ones to end up with a six day hearing when one side has no proper representation. How can an unrepresented wife or husband know whether an offer made by the represented side is fair and acceptable without proper advice. The dismantling of the legal aid system by government is not only grossly irresponsible, it is grossly unfair.

In the public law field, we find a government **determined to pay the publicly funded family lawyers so little that they are just giving up and turning elsewhere.** In time they will disappear from the high street and they will never come back. And don't let me hear from government that the statistics do not back this up. Of course they don't today. Family lawyers are not going to pack up as one overnight. But talk to anyone who knows what is happening and what is going to happen in London or the provinces. They will tell you that their departments are being shunned by their partners, that they will for the time being limp along and operate in cheaper premises. But they will not recruit or be able to recruit new comers or pay the trainees. These are tomorrow's family legal specialists. And if there are no specialist lawyers where will the specialist judges come from in ten or twenty years. There simply will not be the reservoir from which the judiciary at all levels can be drawn.

We find **Local authorities children's departments desperately short of social workers so that those who are there are stretched beyond breaking point and unable to carry out their real function of supporting vulnerable families in their homes.**

**Now too we find Local Authorities being asked to take on a huge increase (upto as much £4,000) in the cost of instigating and conducting care proceedings.** What on earth is the thinking behind a policy which requires one part of government (the local authority) to pay another part of government (HM Court Service) for the actual cost of administering as vitally important public service as the protection of the most vulnerable children? It is muddled and dangerous bureaucratic illogic. It is certainly not child centred thinking. And if, as some have suggested the government is providing the resources to meet the increased cost

what is the point in passing them round in a circle. Of course, it is not doing any such thing. It is all being lost in a small general increase in local authority funding. This increase in the fees will create a major disincentive to local authorities starting proceedings in a timely way. There will be understandable hesitation before children at borderline risk are brought under the protective umbrella of court proceedings.

We find **local authorities unable to fund proper residential assessments** to enable the critically important questions about removing children from their parents to be properly considered. Mr Justice Bodey, not a man given to exaggeration or extravagant statement, said this, in a recently reported decision (*A Local Authority v M* 2008 EWHC 162 fam) where the local authorities inability to fund an assessment was the central question.

*“ This case demonstrates an urgent need for further consideration of the funding of residential assessments. Some arrangements need to be put in place to avoid the need for routine hearings like this on a case-by-case basis, hearings which are costly and which divert judicial resources. It is unsatisfactory if not invidious that courts charged with taking serious and sensitive decisions about children, where an under-informed decision could on occasion spell disaster, should have to choose between (a) overburdening an already over-stretched local authority or (b) denying a residential assessment to a parent for whom it represents the only hope of avoiding the loss of his or her child to adoption.”*

This is a question which has to be faced and not ignored. Taking children away from their parents is arguably the most drastic of decisions any court in this country has to face. We face it on a daily basis, up and down the land. It can and should never be done, on the cheap. Again it is grossly unfair

We find **Cafcass** despite recent funding increases and despite its massive efforts to make its resources stretch to meet demand (via its excellent chief executive) unable, in many parts of the country, to produce a report in under three months. In some places it is much longer. And there is still a shortage of guardians.

We find a terrible shortage of **contact centres** . Those wonderful, small organisations staffed often by dedicated volunteers unable to provide enough space in a reasonable time so that children can see their absent parents safely, in cases where there is a risk or other need for some supervision.

But very little of what I am saying today is new. I quote from the *“Final Report of the Lord Chancellors Advisory Committee on Judicial Case Management in Public Law Children Act Cases”* written 5 years ago in May 2003. It was the report which led to the production of the first public law Protocol. Mr Justice Munby and I ( with Mr Justice Ryder’s help) chaired the committee which had 29 members drawn from every single part of the family justice system from the professions, local authorities, the Department of Health , the Court Service and many independent bodies involved at every level of the system.

Under paragraph 5 under the heading of *“ major Obstacles to success the following is to be found ;* I emphasise this is 5 years ago.

#### **1. “Major obstacles to success**

1.1. The Protocol is an essential step forward, but the Committee would like to record the following major obstacles to real success in this area:

- 1.1.1. **Social services departments** continue to be seriously understaffed; suffering both recruitment and retention of staff problems. This critically limits their ability to speed up the pre-application stages in the care process. It also

has the effect that, were they to focus more of their precious human resources on the actual litigation stage, their other roles in care, prevention and education would be likely to be compromised

1.1.2. **CAFCASS** has a shortage of guardians which, in parts of the country, remains significant. Effective case management within the courts and Cafcass will alleviate some of the pressure. Increased funding for the next financial year is obviously welcome and helpful. However, until guardians can be promptly allocated at the start of each case throughout England and Wales neither the children nor the courts will be receiving the essential and proper service.

1.1.3. **Publicly funded remuneration** for the legal profession must reflect the fact that PLCACs require the full input and co-operation of experienced, specialist practitioners. Without such practitioners the protocol will not work to its best advantage. Underpayment of the practitioners who do this work will inevitably lead to a shortage of such specialist lawyers (and accordingly in the future to a shortage of specialist judges, both part and full time) as the brightest and best turn to better remunerated fields of practice.

Remuneration must also be structured to reflect the fact that the Protocol requires advocates to do considerably more work at the early stages of a case to ensure the early identification and narrowing of issues.

1.1.4. The need for significantly more **Family sitting days** in some areas

1.1.5. **A shortage of experts** in a number of fields prevents the swift hearing of cases in some areas. The Protocol should help but the problem persists.

That was 5 years ago and nothing of any significance has changed.

So what is to be done to halt the downward spiral and turn things around??

**I would suggest five areas require urgent addressing :**

1. So far as government is concerned; family breakdown and family justice needs to be at the top of the political and justice agenda. The maintenance of the family and family life in this country is the priority. It is nothing less than the business of the preservation of our society. It is not just a rather irritating and increasingly expensive political sub issue. It is as important as the management of the economy or the war on terror. And rather more important than the abolition of the plastic carrier bag or the taking of oaths of allegiance. It is as important as the preservation of the NHS. Indeed it is part and parcel of our national health. It requires a full time minister devoting his or her energies to nothing else. It calls for a complete change of attitude by those who govern or would aspire to do so.

Is it fair that there should be a two tiers of children, those who have received a reasonable and secure upbringing and those who have suffered the traumas of family breakdown for most of their minority.

As CS Lewis, one of the greatest Christian apologists of the last century wrote in his seminal work, *Mere Christianity* "It is easy to think the state has a lot of different objects – military, political, economic and what not. But in a way things are much simpler than that. The state exists simply to promote and protect the ordinary happiness of human beings in this life. A husband and wife chatting over a fire, a couple of friends having a game of darts in a pub, a man reading a book in his room or digging the garden- that is what the state is there for. And unless they are helping to increase and prolong such moments, all the laws, parliaments, armies, courts, police, economics etc are simply a waste of time".

That may now sound a little home spun, written as it was during and after the second world war, but the underlying message of the need to preserve and protect our real family life is as valid now as then. Perhaps even more so.

**And let us all**, for it is not only the governments responsibility, wake up to what is happening. We are sleep walking to the edge of the precipice whilst the rot and disease rages out of control.

2. If we are to stem the tide of broken families and the fall out from those families, very significant resources of manpower and money have to be deployed at the expense of less important demands. The tanker has to be stopped and then turned round or diverted. It will take research, expertise, and a lot of time and money. There are certainly no instant solutions. The causes of family breakdown need to be addressed at their very root. We cannot just deal with the fallout and pick up the pieces. This requires education of adolescents and their parents into the causes of relationship breakdown and ways of managing it and preventing it. There are many excellent small charitable organisations working in this area and doing excellent work in for instance, prisons. The success of their work in reducing re offending is all the evidence that is needed as to its efficacy. But it is a matter for national investment as a matter of urgency. It will not produce instant returns even within the lifetime of a parliament. It requires imagination, innovation and cross party long term cooperation. But if the incidence of family breakdown is reduced the returns on the investment are huge. All the social ills which stem from it, and are a massive drain on the public exchequer, from the reduction in criminal and anti social behaviour to improvements in mental health and schooling begin to happen. I would suggest, the NHS would save a fortune too. And of course the need for the rescue services of which the family justice system is an integral part, reduces with it

In the shorter term, **Stop chipping away at the family Justice system and trying to have it on the cheap.** When the forest fire is raging across the land, out of control, it is not the time to reduce the fires stations and pension off the firemen. When the contagion is at its height we need all the doctors we can get. Those who are in the system are all we have at present. Recognise its vital function, fund it properly, all parts of it and let it get on with its skilful and sensitive work. Contact centres, as an example are an inexpensive and vital part of the system. Fund them so they can expand their services. If all this means other sacrifices in the public finances have to be made, recognise that the work is, as important as the NHS in its effect on the health of the nation.

3. In addition we need, certainly in some parts of country, mine included, **a real increase in the number of family sitting days.** It is no use having the extra family judicial manpower if we do not have a fair allocation of the overall supply of days. We do not a fair share because political constraints determine that crime should have much more. That thinking is misplaced and quite out of date.
4. **Finally "fairness.** Face up to the need to reform the substantive law of divorce, financial ancillary relief and the law relating to cohabitants. Stop ducking the issue. Divorce law and ancillary relief law was last properly reformed two generations ago in the mid sixties when society was altogether different. The current laws are not suited to modern social mores or the way we live now. When the last major reform was introduced there was no such thing as cohabitation outside marriage. Now it is as common as marriage if not more so. In 2002 in *Cowan* and again last year in *Charman* Lord Justice Thorpe in two long and careful judgments in the Court of Appeal called for urgent reform. There is simply no one in the land who has a greater wealth of experience in this field than him. His pleas have fallen on totally deaf ears twice.

The government began the process in the nineteen nineties but because it all became somewhat controversial (as it is bound to be in relation to any reform of the law which directly impacts almost everyone one in the country) they backed off and lost the will to proceed. Now, also, any attempt to produce a comprehensive reform of the law relating to the property of those who cohabit without marrying is going on the back burner. We shall continue to struggle on using concepts from the middle ages.

Both these areas need urgent and in depth reform. The attempts by the House of Lords with *White* and *Macfarlane* and more recently the Court of Appeal in *Charman* to put a new supercharged engine into the old chassis are imaginative and perhaps better than nothing. “**Fairness**” is what we are all asked to try and achieve. But what does Fairness mean in the context of the social and behavioural mores of 2008. Their Lordships have given us all plenty to chew on but enough is enough and their pronouncements are no substitute for new and proper, upto date law which is the product of the elected legislature and which meets all the needs of society as it now functions.

In fact, as we know, in practise, aspects of these decisions have produced much confusion and many of the new concepts, fine in theory, are expensive to apply and examine. The old but even more imperfect system of applying the criteria of “needs” at least had the merit of being cheap and simple to apply. The new approach is complex and costly in all but the most simple cases.

As Lord Justice Thorpe said in *Cowan* when talking about the need for reform “*It is for Parliament not the judges to take us there , however uninviting the terrain may appear to the government of the day.*”

The judges can take the matter no further without making matters worse and more uncertain.

Government simply has to grasp the nettle and get on with it.

Surely, if enough parliamentary time has been found over the last decade to reform the law relating to the rights of minorities, it can be found to reform critically important laws affecting the rights of the majority ?

These are my five suggestions for urgent action. We cannot go on like we are or the consequences for society in the medium and long term are frankly dire. I hope you do not think this is just another rant about the shortage of resources at a time when public finances are, as always, overstretched. It is not meant to be. It is a call for a radical rethink by government and by us all about the centrally important family justice system

I am convinced the whole system is doing its best to help. The very successful reforms to the financial proceedings were entirely judge and profession driven. The Private law programme, the initiative of the last President has been a consummate success. The first Public law Protocol in 2003 was also the initiative of the President. The new Public Law Outline is yet another innovative, judicially led reform supported by the government which has the potential for saving time and money, But only IF IT and the system as a whole IS PROPERLY FUNDED by government. (AND THAT IS, IT SEEMS A BIG “IF”).

And from the ranks of you own members the introduction and increasing use of Collaborative Law. A radical new approach which I for one wholeheartedly champion whenever I get the chance. These are all examples of the forensic process being scrutinised to achieve savings of time, money and, as important, stress to the family at a time of maximum stress in their lives.

But there are limits to what can be achieved by the system as it is and as it is becoming, unaided.

So my message to you is that the work of this organisation has never been more vital to the health of the nation. Do not allow yourselves to lose sight of the big agenda of which you are an essential part. The family judiciary are your greatest supporters and I am in the vanguard of the fan club. With the Family Law Bar Association you are providing a vital service to the community at a time in the life of the individual families' for whom you act, when they are at their most fractured, needy and stressed.

I love the name "*Resolution*". It is an inspired name for the organisation. It imports both the concept of being *resolved* to get things done, combined with *resolving* problems in the sense of finding solutions. If those are your twin aims they are the right ones. That is what your organisation stands for and should stand for.

Thank you, on behalf of all the family judiciary, for what you all do so well.

Thank you very much for giving me the opportunity to speak to you this morning.

I hope you have an exiting and stimulating conference.

**Paul Coleridge**