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Lord chief justice calls for reform of family system;



Tuesday 26 October 2010 by **James Dean**

The adversarial court system is not appropriate for settling parental disputes over the custody of children, the lord chief justice said today.

Giving evidence to the House of Commons' justice committee, Lord Judge (pictured) said he has 'real concerns' that the adversarial system 'leaves a great deal to be desired' in cases where there are no allegations of child abuse.

The government-commissioned Family Justice Review, which is considering these issues, will issue an interim report in spring 2011. Judge said he will be 'disappointed' if, when the review is published, 'we end up adhering to the adversarial system in what I've described as private law cases'.

Judge said: 'In cases involving the care and future of children, I have the most serious reservations about whether the adversarial system is in any way to the advantage of the child.

'My real concern, and where my attention is directed at the moment, is the ordinary private law case: the case where the parents are no longer happy together and decide to split up, and they can't quite agree about the future of the children, or what's best for them.

'I cannot think that the adversarial system improves their relationship with each other, and their relationship as a mother and father of these children. There, I think the adversarial system leaves a great deal to be desired, as the adversarial system means winning. There's no winner in the context of a child case.

'Then there are the cases where the parents are not acting in good faith, where one or other parent is using the child as a weapon to get back at the other partner. Those cases have got to be resolved as quickly as possible, because children simply cannot be treated this way. And there, again, the adversarial system gives the parent who is using the child as a weapon, a better opportunity to use the child as a weapon.

'It's not mediation: it's about standing back and everybody trying to take a sensible view that it is not about victory, but what suits the interest of the child best. You may say this is idealistic, but it shouldn't be too difficult to achieve.'

Judge said that in cases where there have been allegations of child abuse, 'it's tantamount to say that the mother or father or carer is committing a crime. Those, I think, have to have something like the rigour of the adversarial system.'

He also reiterated comments made at the Lord Mayor's dinner for the judiciary in July, where he called for greater efficiency in the court process.

'I feel very strongly that we have to operate the legal aid system in a way that incentivises efficiency,' he said today.

'The legal aid system does not recognise efficiency. We pay more if the case takes longer. It may be that a case should take as long as it does, but just because a case takes longer doesn't seem to me to merit more money. It seems to me elementary: we should pay more for the responsibility and for the work done well. Somehow or other we have lost that knack.

'We do need to look at whether the advocate who acts for a defendant in a magistrates' court should be paid less than in a Crown court – where so many cases collapse. Think of the number of police officers and witnesses that won't have to go to the Crown court. I want the legal aid system to be working in tandem with an overall more efficient administration of justice.'

Judge said that Lord Justice Jackson's recommendations on civil litigation costs, if implemented by the government, would create 'a much more efficient civil justice system'.

'The civil justice system works pretty well,' he said. 'A more problematic area is the actual cost to the litigant. Costs are prohibitively high.'