

Opinion Piece: The Art of the Possible in Family Justice

Baldip Singh Aulak, Barrister at No 5 Chambers provides an opinion piece on 'The Art of the Possible in Family Justice'



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In a current case, where I am being led by [Sharan Bhachu of 42BR](#), Mrs Justice Lieven said that “family justice is the art of the possible.” This succinct yet profound observation encapsulates, in my eyes, the delicate balancing act inherent in the family justice system, where the needs and rights of children and parents must be harmonised within the constraints of limited resources and time. Her Ladyship’s remark highlights the pragmatic approach required to manage the complexities and emotional intensities of family law cases. Moreover, it underscores the urgency of addressing the backlog of cases and the necessity of expediting proceedings to prevent further delays and making every hearing count.

Understanding “The Art of the Possible”

In my view at its core, Mrs Justice Lieven’s statement reflects the principle that family justice operates within a realm of practicality rather than perfection. Unlike other

areas of law where rigid adherence to statutes might be feasible, family law necessitates a more flexible approach. This is because family cases often involve deeply personal and nuanced issues, such as Forced Marriage Protection Orders disputes, child welfare concerns, and domestic violence including so called honour-based violence situations. These cases require a tailored approach that considers the unique circumstances of each family, aiming for outcomes that are not only legally sound but also in the best interests of the children involved.

The “art of the possible” in this context means striving for the best achievable outcome given the constraints. It involves a careful balance of fairness, compassion, and legal precision. Judges, lawyers, and social workers must navigate through incomplete information, high emotions, and conflicting interests to arrive at decisions that, while not perfect, serve the overall wellbeing of the families involved.

The Need to Expedite Cases

One of the pressing issues in the family justice system today is the backlog of cases. This accumulation has been exacerbated by the COVID-19 pandemic, which disrupted court listings and created a significant delay in hearings. The Art of the Possible emphasis on the need to get on with cases speaks directly to this challenge, with the Presidents guidance on “making every hearing count”. Delays in family cases can have severe implications, particularly for children who may be left in precarious or unstable situations while awaiting court decisions.

The principles of ensuring that cases are dealt with expeditiously and fairly are enshrined in the overriding objectives of the Family Procedure Rules. These objectives aim to deal with cases justly, ensuring that they are handled efficiently and fairly, with appropriate regard for the welfare of any children involved. Prolonged delays not only contravene these objectives but also prolong uncertainty and distress for families. Swift resolution of cases helps to minimise the emotional and psychological impact on all parties, especially vulnerable children.

Overriding Objectives and Judicial Efficiency

The overriding objectives set out in the Family Procedure Rules provide a framework for achieving justice in family cases. These rules stress the importance of fairness, efficiency, and the minimisation of delays. They also emphasise the need for proportionality, ensuring that the time and resources allocated to a case are commensurate with its complexity and significance.

Judges play a crucial role in upholding these objectives. They must manage cases proactively, setting clear timetables and encouraging parties to resolve issues

amicably where possible. Effective case management involves making decisions promptly and ensuring that unnecessary adjournments are avoided. This proactive stance is vital in reducing the backlog and preventing new delays from arising. It is always helpful to remind ourselves regardless of how many years into the profession we are;

The overriding objective (FPR)

1.1

(1) These rules are a new procedural code with the overriding objective of enabling the court to deal with cases justly, having regard to any welfare issues involved.

(2) Dealing with a case justly includes, so far as is practicable –

(a) ensuring that it is dealt with expeditiously and fairly;

(b) dealing with the case in ways which are proportionate to the nature, importance and complexity of the issues;

(c) ensuring that the parties are on an equal footing;

(d) saving expense; and

(e) allotting to it an appropriate share of the court's resources, while taking into account the need to allot resources to other cases.

Clearing the Backlog

To address the backlog, a multi-faceted approach is necessary. Increased investment in the family justice system, including the appointment of additional judges and support staff, can help to alleviate the pressure. Moreover, the adoption of modern technologies, such as virtual hearings, which became more prevalent during the pandemic, should be continued and refined for suitable cases. These technologies can expedite proceedings by making them more accessible and flexible, reducing the time required for court appearances and ushering parties in and out of Court.

Additionally, there should be a focus on *affordable* alternative dispute resolution (ADR) methods, such as mediation and arbitration. These methods can resolve many family disputes outside the courtroom, freeing up judicial resources for more complex cases that require formal adjudication and require more court time rather than having to squeeze cases in due to limited judicial availability. Encouraging ADR

not only speeds up the resolution process but also often leads to more amicable settlements, reducing the likelihood of future conflicts. A discussion between ADR and its similarities to private healthcare is a discussion that warrants a whole article to itself.

Avoiding Further Delays

We must all play our part, in ensuring that every hearing counts, preventing further delays in family cases requires a concerted effort from all stakeholders in the justice system. Lawyers need to prepare cases thoroughly and efficiently, with bundles to be lodged in a timely manner, avoiding unnecessary adjournments and procedural delays. Social services and other support agencies should provide timely and comprehensive reports to inform judicial decisions. Furthermore, the courts must continue to streamline procedures and eliminate bureaucratic hurdles that can cause unnecessary slowdowns, I draw the reader's attention to 1.4(j) (FPR) (j) dealing with as many aspects of the case as it can on the same occasion.

In conclusion, Mrs Justice Lieven's statement that, "family justice is the art of the possible" highlights the pragmatic approach necessary to navigate the complexities of family law. By focusing on what can realistically be achieved, the family justice system can strive to deliver fair and timely outcomes for families. Addressing the backlog of cases and preventing further delays are critical to ensuring that justice is not only done but seen to be done, fostering trust and stability within the family justice framework and the Rule of Law.

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