THE NAGALRO SPRING ONLINE CONFERENCE

'Understanding the Real Cost of Deepening Poverty for Children – can we remain hopeful and helpful?

Monday 13 March 2023

An introductory paper by Sir James Munby

The aim of this important conference is to address the impact of poverty on children as a moral issue, as a matter of social justice, and as a matter of professional, in particular social work, practice. I need to emphasise that this ***is*** a moral issue, and it raises profoundly important questions of social justice.

It is critical that all of us – social workers and other frontline professionals, lawyers preparing and advocates presenting cases, and judges – are equipped to recognise the increasing impacts of the many forms of deprivation and disadvantage which afflict so many of the families and children we are assessing and working with: economic deprivation (food and fuel poverty, unemployment and, for those in work, disadvantageous employment practices); loss of community resources; housing conditions; mental health difficulties; learning disabilities, domestic abuse; addiction; stigma; loss of opportunity; low self-esteem; and lack of aspiration.

We need to be able to identify and quantify issues of deprivation, whilst at all times maintaining the primary focus on the child.

Others who know much more about this than I do will develop these themes. My task at the outset is more modest: to offer some thoughts from the perspective of a retired judge.

It is now generally recognised that many, many, families involved in care proceedings or other aspects of the care system are, in the sense in which I have used the words, afflicted with deprivation and disadvantage. (Increasingly we are recognising the same reality in relation to private law proceedings.) The corollary of this is that, disproportionately, the care system and care proceedings bear down more heavily on the deprived and disadvantaged. This has a profoundly important if little referred to consequence in terms of social justice. Let me put the point starkly: How often does one see care proceedings involving 'middle-class' parents where the allegations are of neglect or emotional harm? In my experience, pretty rarely.

Before proceeding further, let me articulate three fundamental propositions:

- Children in the care system have greater needs than other children: Most children taken into care have suffered neglect and emotional harm. Many have suffered serious – sometimes very serious – abuse. So, their needs are greater than those of other children. They, and those looking after them, need more support, more services, than other children.
- The State has neither the legal nor the moral right to take a child into its care unless it can provide the child with better care. As I said as long ago as 2001, in a shocking case of two brothers 'lost in care':

> "The State assumes a heavy burden when it takes a child into care … if the State is to justify removing children from their parents it can only be on the basis that the State is going to provide a better quality of care than that from which the child in care has been rescued."

This, unhappily, is a message that can never be repeated too often.

- It is common wisdom that children who have been in care, and particularly those who remain in care until they are 18, suffer many disadvantages in adult life, that their life chances are not what they should be and not as good as other children's life chances. Those who have been in care are disproportionately over-represented, for example, in prisons and mental hospitals and under-represented in universities and other places of higher education.

This is the basis upon which we have to address the fundamental reality, which dominates everything else: the State is failing to meet its children's needs and failing in its moral duties.

The current prevalence of rough sleeping, as of food banks, is an indictment of how society treats its most vulnerable. It is deeply troubling that it took the anguished pleading of a prominent footballer to rouse the conscience of the nation in relation to school meals and to drive the Establishment to action. It is deeply troubling to hear the comments of those who criticise parents driven to have recourse to food banks. Too much rhetoric still sees the issue in terms of the 'undeserving poor'. Too much rhetoric is markedly judgmental. Too much discussion of these dire problems – dire because of their impact on our fellow citizens – is marked by lack of empathy, lack of understanding, lack of compassion and lack of humanity. The long-standing policy of 'No Recourse to Public Funds' – driving people into street destitution and other indignities – is an affront to any acceptable notion of decency. That government could proudly proclaim its 'Hostile Environment' policy is striking for what it tells us about our society – an affront to civilised values little ameliorated by the substitution of the more anaemic phrase the 'Compliant Environment' policy.

And why is this? Essentially, because of budgetary constraints, lack of resources and the unwillingness of government – of society – to do anything effective.

In relation to the family courts, there are of course structural problems, eg:

- Family courts are not sufficiently focused on problem-solving: there is a pressing need for the expansion of FDAC to cover the entire country, to put an end to the present desperately unfair postcode lottery, and, more generally, to extend the concept of problem-solving across the family courts.
- The inability of court to direct provision of resources / services. For example, s 38(6) of the Children Act 1989 enables the court to direct an assessment, but not the therapy identified as essential by the assessment.

That said, it is vital to have constantly in mind the very recent and profoundly important judgment of Baker LJ in the Court of Appeal in *Re H (Parents With Learning Difficulties: Risk of Harm)* [2023] EWCA Civ 59. He cited what I had said in *Re B-S (Children) (Adoption: Leave to Oppose)* [2013] EWCA Civ 1146:

> "It is the obligation of the local authority to make the order which the court has determined is proportionate work. The local authority cannot press for a more drastic form of order, least of all press for adoption, because it is unable or unwilling to support a less interventionist form of order. Judges must be alert to the point and must be rigorous in exploring and probing local authority thinking in cases where there is any reason to suspect that resource issues may be affecting the local authority's thinking."

He also cited what I had said in *Re D (A Child) (No.3)* [2016] EWFC 1:

> "parents must, in principle, be supported and provided with the assistance that, because of their particular deficits, they need in order to be able to care for their child … the positive obligation on the State under Article 8 imposes a broad obligation on the local authority in a case such as this to provide such support as will enable the child to remain with his parents."

Baker LJ went on (*Re H*, para 65):

> "As the case law makes clear, there is an obligation on a court to enquire carefully as to what support is needed to enable parents with learning difficulties to show whether or not they can become good enough parents. A local authority cannot press for a plan for adoption simply because it is unable or unwilling to support the child remaining at home. A judge must therefore be rigorous in exploring and probing the local authority's thinking in cases where it may be affected by resource issues. Support for parents with learning difficulties may have to be long-term, extending throughout the child's minority, in part because parents with cognitive difficulties, even if they understand the information they have been given, may find it difficult to retain it or to apply it as the child gets older, but also because, as the child gets older, her needs will evolve and the range and level of support and guidance required by the parents must evolve alongside. Judges need to be wary of arguments based on the concept of "substituted parenting". They should carefully scrutinise the evidence adduced by the local authority that the level of support required by the parents would be on a scale that would be adverse to the child's welfare and should look for options for ameliorating the risk of harm that might result from the high level of support. It is all encapsulated in the simple sentence in paragraph 1.4.4 of the Guidance … – "every effort should be made to support not supplant the parents.""

Now this was said in the specific context of parents with learning disabilities, but it surely has a much, much wider significance. The general approach articulated by Baker LJ must surely extend to families afflicted with other forms of deprivation and disadvantage. And if I may be didactic for a moment, its vital lessons are surely not directed merely at the judges: they are lessons which should inform all professional practice, whether of social workers, guardians and lawyers preparing cases or arguing them in court.

Worst of all, there are even more serious failings in relation to the children themselves. It is, unhappily, notorious that the State – I say the State, for local authorities are not provided with

financial support sufficient to meet their needs and the needs of the children for whom they are responsible – is failing far too many of the children in its care.

These failings are the subject of increasing concern and frustration by judges (as their published judgments continue so vividly to illustrate) and increasing criticism in the media.

Let me give three examples – no doubt there are too many others – of what I do not shrink from saying are serious failings by the State, failings which increasingly put into question our right to call ourselves civilised and compassionate. I take them in no particular order:

- First, there is the serious lack of adequate provision, residential and non-residential, for the increasing numbers of children with mental health difficulties.
- Secondly, there are the increasing difficulties in finding suitable secure accommodation and other therapeutic resources for some of our most troubled children. Judges, in desperation, find themselves, far too often, having to put damaged children in unsuitable placements.
- Thirdly, there is the scarcity of suitable housing accommodation available for young people in care or as they transition out of the care system into adulthood.

What is wrong with us?

Sadly, far too much of this seems to fall on deaf and uncaring ears.

What all this illustrates is the shameful lack of housing and other resources which impacts so adversely upon some of the most vulnerable in our society. It is a commonplace that we live in an era of austerity. But however great the temptation, in or out of Whitehall, to use this as a convenient explanation for the serious problems currently facing us, the truth is bleaker and more profound. For these problems have their roots in policies, some seemingly shared by Governments of whatever political stripe, pre-dating the banking collapses and ensuing financial crisis of 2008, though no doubt greatly exacerbated by the policies and the rhetoric of more recent governments and their supporters. And although the problems afflicting the vulnerable have been made much worse – often very much worse – by the pandemic, none of these problems has been created by it. What the pandemic has done is to shine a powerful searchlight on to the unnecessarily damaged lives of too many of our most vulnerable people and children – but what action is being taken in response?

We are, even in these times of austerity, one of the richest countries in the world. Our children and young people are our future. As is often said, one of the measures of a civilised society is how well it looks after the most vulnerable members of its society. If this is the best we can do, what right do we, what right do the system, our society and indeed the State itself, have to call ourselves civilised? The honest answer to this question should make us all feel ashamed.

What is to be done?

Fundamentally, we need a drastic increase in the resources necessary if these problems are to be tackled effectively; but given the lack of compassion and political will in our society, how likely of achievement is this in contemporary Britain?

This is not a cry for some distant and unachievable utopia. It is a call for decency, humanity and compassion to be afforded their proper place in a very affluent society so that this affluent society can properly claim the right to be called civilised.

If we, as a society, are not prepared to provide the necessary resources, then we face a very stark, and fundamentally moral, question: How can we go on as we are at present? On one view there are, objectively analysed, too many children in the care system – how, after all, can we explain, let alone justify, the astonishing increase in the care population over the last ten years since, I emphasise, the Baby Peter 'spike'?

Be that as it may, it is surely indisputable that the present systems – both the local authority systems and the court processes – are incapable of dealing properly, and in a manner compatible with children's welfare, with the current numbers of children in the system. If society is not willing to provide us with adequate resources, should we not be significantly reducing the number of children we bring into a failing system, so that those reduced numbers might actually benefit from a system which would then be able to cope?