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# The Forward March of Children's Justice Halted

Edward Lloyd-Jones

With a foreword by  
District Judge Nicholas Crichton

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Devon. EX13 5PF  
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+44 (0)1297 631456  
info@triarchypress.com  
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## Foreword

I was a solicitor in private practice in the early 1970s until the mid 1980s. Today it is hard to believe the way in which child protection issues were dealt with at that time. The Children Act brought about a massive and welcome change of approach. Since its implementation in September 1991 there has developed a greater awareness of the complexities involved in making crucial decisions in the lives of the most disadvantaged and vulnerable children in our society, together with a greater sophistication in our understanding of their plight.

Edward Lloyd-Jones has pulled together the strands of what now seems to be a systematic dismantling of all that has been achieved in the last 17 years. He raises questions which need to be urgently addressed.

Nicholas Crichton

Resident District Judge, Inner London Family Proceedings Court

## Preface

I have worked for many years, in our office on the Old Kent Road, with two remarkable individuals; Ajanta Sinha and Marya James bring not only intellectual depth and cultural breadth to their legal practice but also a powerful engagement with their frequently embattled clients – society's least advantaged. Ajanta and Marya daily demonstrate that although the idea of justice as fairness may be out of political fashion it will never be vanquished as a value.

Don Staines and a number of colleagues in law, social work and academia have been kind enough to make helpful comments on what follows. Any remaining errors are entirely mine. I thank Andrew Carey and Alison Melvin at Triarchy Press for their encouragement and expertise in guiding this paper into the light of day.

This pamphlet is intended, above all, as an urgent call to arms. Time is short. Does this Labour government really want the withdrawal of justice to our most vulnerable children and their families to be part of its legacy?

Edward Lloyd-Jones  
Southwark September 2008

## **The Forward March of Children's Justice Halted**

"The Law", wrote Wilkie Collins in the middle of the 19<sup>th</sup> century, "is the pre-engaged servant of the long purse".<sup>1</sup> The courts were open to all – as was the Ritz hotel! With the introduction of the legal aid scheme a century later, people of modest means (the scheme originally embraced 80% of the population) were able to be advised and represented in criminal and family cases, and specialist areas of "welfare law" such as housing and immigration were developed. Such advice and representation was often delivered through specialist legal aid solicitors' firms and the community law centres which began to appear at the end of the 1960s.

An area of particular and increasing concern to these lawyers related to care proceedings brought by local authorities through which children could be permanently removed from their birth families. Under the then governing statute, The Children and Young Persons Act 1969, the local authority seeking a care or supervision order on the basis of a specified parental deficiency made a complaint to the juvenile court. There was no requirement for the local authority's evidence to be in writing and parents were not automatically entitled to be parties to these applications although they could be joined to contest particular allegations. Legal aid was not

available to them, nor was there effective independent representation of the child. If the case was proved, the court would be invited to make a care or supervision order on the basis of an often brief and superficial report in which there was no requirement to provide any detailed planning for the child's future. Such scant law as there was essentially permitted local authorities wide discretion as to how they exercised their powers once a care order had been made. The underlying assumption of the legislation was that local authorities could be trusted to behave responsibly to promote a child's welfare. This did not always happen and the name of Maria Colwell continues to resonate chillingly with family practitioners of all disciplines. The report into her death, published in 1974, found that, having been in local authority care, she was returned to her mother's care and then death at the hands of a violent step-father, following a collusive agreement between the local authority and the family.<sup>2</sup> The agreement had excluded adequate consideration of the child's own anxieties about returning home. This case is often considered to have been the decisive influence in establishing a universally shared view amongst social work practitioners, lawyers and academics: that it was imperative for a child in care proceedings to have independent party status and to be represented on an equal footing with the other parties.

The Children Act 1989, which came into force with all party support in 1991, revolutionised the way in which care proceedings were conducted. Gone were the rudimentary and patently inadequate procedures

of the old juvenile court. Instead, a new code of law and procedure enabled the parties, typically the local authority, the parents and the child, to be equally represented and for evidence to be presented in an open and accessible manner. If the court decided that a child had suffered or was likely to suffer significant harm, it had nevertheless to approve a detailed care plan for the child before entrusting his future care to the local authority. The child's welfare should always be paramount but there was a strong policy presumption in favour of keeping families together, with appropriate support, unless removal was essential in the child's best interests. The child was represented in the proceedings by a guardian who, when the system began, was nearly always a highly experienced social worker and was independent of the authority bringing the application. The guardian would work with a solicitor appointed from a specialist children's panel.

The new system was widely recognised as a major improvement on what had preceded it. No one would wish to be embroiled in legal proceedings concerning the future care of their child but parents would now have, for the first time, the opportunity of thoroughly scrutinising the local authority case. They would then be able to bring forward alternative proposals, if necessary, through the introduction of independent expertise, such as a psychiatrist or a psychologist. As the nineties unfolded, a significant body of case law evolved in accordance with the liberal and purposive philosophy of the Act. For example, the House of Lords interpreted a provision of the Children Act<sup>3</sup> as giving

power to the courts, in appropriate circumstances, to direct a local authority to pay for a child, who was subject to an interim care or supervision order, to undertake a residential assessment with his parents in a specialist independent unit.

Problems remained, however, including concerns that care plans presented to the court tended to evaporate once the court's scrutiny was removed at the end of the case, and there was continuing anxiety about the ability of local authorities to recruit and retain social workers of sufficient calibre. It was not unusual in some local authority areas for there to be three or four changes of social worker during the course of a single case. Such discontinuities delayed the initiation and conduct of proceedings and hence the process of determining the child's future, often with damaging consequences.

In considering this problem in his evidence to the Select Committee on the Lord Chancellor's Department (now the Ministry of Justice) in 2003, District Judge Crichton of the Inner London Family Proceedings Court said: "The social work profession is insufficiently respected. They work at the white heat/sharp end of the problems of some of the most difficult families. They are insufficiently resourced and insufficiently paid, insufficiently valued by the society within which they work. As a result they do not always attract the people best suited to the work. Of course, many are deeply committed and do excellent work – in our courts we see the best examples as well as the worst. However, even the best are over-worked and under-resourced,

constantly engaged in crisis management rather than having the opportunity to gather the information, to study it and to plan ahead for individual families and children". Social work, certainly in London, would probably have ceased to be viable at all were it not for the large influx in recent years of social workers from Australia, New Zealand, Africa, Asia and Central and Eastern Europe.

One might have expected the incoming Labour government of 1997, with its expressed concern for vulnerable children, to consolidate the best of what had developed under the Children Act and to sympathetically address weaker aspects. The reverse has been the case. When the system of children's guardians got properly into its stride, following the coming into force of the Children Act, its administration was heterarchical and it was very much led by self-employed practitioners who were accountable to the courts to which they reported. The Children and Families Court Advisory and Support Service (CAFCASS) was set up in 2001 to bring together guardians engaged in public law cases (proceedings brought by local authorities in relation to children), those engaged in private law work (disputes within families), and the specialist work, in relation to persons under a disability, carried out by the Official Solicitor.

Reflecting, in a lecture towards the end of 2006 on CAFCASS's early years, Lord Justice Wall said: "Its creation presented an opportunity for the provision of a properly funded, dynamic and wide ranging

family support system. That opportunity was, frankly, squandered... [there has been] a devastating haemorrhage of talent and an acute shortage, particularly in London, of competent guardians in public law cases".<sup>4</sup> In relation to Lord Carter's review, *Legal Aid: A Market Based approach to Reform*<sup>5</sup>, Lord Justice Wall expressed himself in robust terms: "I cannot, in my 24 years of practice at the bar and my 13 years on the bench, recall any proposal by any government of either political persuasion which [has] caused such consternation. From the President of the Family Division downwards the response has been clear, well informed, powerful and unanimous. There is unanimity amongst the profession and the judiciary that the implementation of Lord Carter's proposals would have a devastating effect on the practice of family law." Lord Justice Wall lamented that there had already been a severe reduction in the number of lawyers entering the profession who had opted for children's work. Less than 1% of the specialist solicitors' Children Panel are under 30 and between 2001 and 2006 there was a 20% reduction in the overall number of solicitors on the panel. During the same period there was a reduction of over 40% in the number of solicitors' firms undertaking legally aided family work. The departure from this area of experienced, able and committed solicitors and guardians is widely attributed to the sustained and dispiriting effects of intrusive, unnecessary and wearying bureaucratic burdens imposed by the Legal Services Commission and by CAFCASS, with its 6 (or is it now 7?) layers of administration. The continuous

erosion of reasonable pay has also played its part: for example, an expert witness in a care case, such as a psychiatrist or psychologist, will typically be paid seven or eight times the hourly rate paid to self-employed guardians.

The government chose to address the symptoms rather than the causes of delays in public law children's cases by introducing the Protocol for Judicial Case Management in Public Law Children Act cases in 2003. This highly prescriptive document prompted widespread misgivings among practitioners with many arguing that the approach was misconceived. Protocols can be helpful, for example, in providing a structure for the examination of matrimonial assets in order to determine a fair distribution of them following divorce and in helping to prevent a party with greater financial muscle from manipulating proceedings to his advantage. However, cases involving humanity at its frequently most complex are rarely susceptible to such a directive and reductive approach. It is dangerous, as John Gray has recently observed, to subject "the unfathomable complexity of human lives to the deadly simplicity of a scientific formula".<sup>6</sup> In practice the protocol was gently dropped in most courts after a few months. A note of realism was struck by the Lord Chancellor's Advisory Committee on Judicial Case Management in Public Law Children Act cases in its final report of May 2003 when it identified the following "major obstacles" to real success in this area: the serious understaffing of social services

departments; the shortage of guardians; legal aid under-funding; shortage of court time; shortage of specialist judges and shortage of experts.

New Labour used to pride itself on its “what works” pragmatism. Bizarrely, however, this government appears to have disregarded best practice and perversely promoted poor practice. For example, in the original conception of the guardian's role as approved by the courts, a guardian would be appointed to represent a child in proceedings at the start of the case and remain throughout, to its conclusion. One of the many advantages of this practice was that it enabled the guardian to develop a relationship with the child; as a consequence the guardian could give the court the most helpful and informed evidence possible as to that child's wishes and feelings, as well as the guardian's own assessment of the child's best interests. It also provided for continuity of representation, much valued by the courts, especially in cases where there would be several changes of social worker throughout the proceedings. As CAFCASS has developed its layers of administration, guardians have increasingly felt that their professional autonomy and judgement has been undermined and that they are increasingly discouraged from maintaining a relationship with a child throughout the duration of the proceedings. As already observed, many of the best have left.

Having enfeebled the system of family justice during its first decade in power, the government has recently produced a series of linked measures that may well

have the effect of entirely subverting the system introduced by the Children Act 1989 and of returning matters to the pitifully inadequate pre-existing system. The first wave occurred in October 2007 when a system of fixed fees was introduced for solicitors in public law children's cases. This system could mean that essential work, running into thousands of pounds, will go unpaid: a situation that may well prove ruinous for the small firms within which the majority of specialist children's solicitors work and serve only to further hasten the exit of specialist lawyers from this area. The Legal Services Commission has also recently announced proposals to further reduce the fees paid to barristers for such work. At the same time the government changed the legal aid rules so that publicly funded parties could no longer be called upon to share in the costs of residential assessments of children with their families. The consequence is that the entire cost of such assessments now falls upon local authorities. A prerequisite of a successful application for a residential assessment has often been a positive viability assessment carried out by the proposed specialist assessment unit. Such viability assessments are also no longer publicly funded; this is a major injustice for children and their families especially where local authorities oppose such assessment. These changes have been strongly criticised by the Family Justice Council, as was noted by Mr Justice Bodey in a recent case<sup>7</sup> when he also observed that: "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”.

The Public Law Outline<sup>8</sup> (PLO) was introduced nationwide in April 2008, having been tested in a number of local authority areas over the preceding months. It has a dual purpose: to avoid proceedings being taken if possible and to speed up proceedings that are taken. The chosen mechanism requires local authority children's services departments to carry out assessments of the child and his immediate and wider family, and to produce detailed written records of the outcome before proceedings can be undertaken. No fewer than five detailed documents have to be lodged with the court before the first hearing. There is then tight provision for the other parties to file their evidence before leading on to a case management conference. This is followed by an Issues Resolution Hearing (it seems that this hearing was originally to have been called an Issues Resolution Appointment until some bright spark noticed that combining the IRA with the PLO might be a bit risky!) when the entire case may be wrapped up, with a final hearing to follow on if considered necessary. The PLO has been derided by many experienced lawyers and judges for repeating the unrealistic bureaucratic reductionism of the original protocol, while somehow contriving to be even more prescriptive. If the system were adequately

funded and widespread demoralisation of practitioners had not occurred, the PLO would be unnecessary; its introduction is likely merely to highlight and exacerbate the existing weaknesses in the system. To anyone actually involved in care proceedings, it is a patent nonsense. There are cases that, under the existing law and rules of court, can be dealt with very quickly and others that require more careful thought, consideration and assessment. The real reasons for delay in children's cases are to be found, as discussed above, in the chronic-under-funding and undermining of the key protagonists: social workers, guardians, lawyers and those who work in the courts. Interestingly, some of the most vehement denunciation of the Public Law Outline has come from social workers. First, there appears to be no additional funding to assist in the proposed "front loading", which will inevitably mean that children in the more challenged authorities will be left in unsatisfactory and possibly dangerous circumstances for months before a case gets to court. Secondly, many social workers find the proposal for assessments (which have, hitherto, largely been carried out during the course of care proceedings) to be carried out entirely in-house to be quite unrealistic and unjust. There are cases in which a complex assessment of risk needs to be undertaken: cases where there are difficult questions relating to a child's attachment patterns; cases involving complex medical investigations of the cause of injuries; and cases where it needs to be determined whether a parent with a learning disability can acquire and retain new skills so that he or she can

provide, with appropriate support, consistent and adequate care for the child in the future. In all such cases, good social workers would much prefer parents and the child to be properly represented and for the process to be overseen by the court. It is breathtaking that a system originally designed to protect the interests of children has now excluded them from any right to representation. In the pre-proceedings stage, when key and sometimes irreversible decisions may be made, only the local authority and parents may be represented. Yet, it is only *within proceedings* that appropriate independent expertise can be brought to bear on such cases. The process-driven PLO is difficult to reconcile with the spirit of the Human Rights Act and, in particular, the Convention requirement of a fair trial guaranteed in Article 6<sup>9</sup> and of respect for family life provided for in Article 8.<sup>10</sup> The overriding objectives of the Civil Procedure Rules, including in particular the requirement that the parties be on an equal footing, appears to have been given little, if any, consideration.

The measure, however, which really takes the biscuit is the extraordinary increase in court fees. These are charged to local authorities in public law children's cases and came into force on 1<sup>st</sup> May 2008. Previously the local authority paid a fee of £150 when issuing a care application in relation to a child. The new fees scale brings the total cost of proceedings to £5,025, an increase of well over 3000%. Alistair McDonald, joint chair of the Association of Lawyers for Children, said: "This astronomical increase in court fees demonstrates

once again that the government has completely lost its way on the fundamentals of child protection and family justice. Coupled with reforms to family legal aid that are driving specialist child care lawyers out of business and leaving vulnerable children and families unable to find legal representation, this massive fee increase is yet another nail in the coffin of the child protection and family justice systems. This from a government which claims that the family is at the heart of its agenda". Condemnation has also come from all tiers of the judiciary. The Association of District Judges has expressed concern that the new fees scheme will act as a significant disincentive to local authorities to start public law care proceedings. The Council of Circuit Judges has expressed alarm that the lack of ring fencing of compensatory funds provided to local authorities by the government provokes anxiety: that cases will not be brought to court when they should be. "It may be unlawful for local authorities not to carry out their responsibilities to children but money cannot cease to be a consideration when important decisions have to be taken against the background of stretched resources in relation to staff as well as finance. We have been told that the City of Birmingham estimates its budget for starting proceedings would increase from £37,500 to £1.5 million". The Family Justice Council said that "it is difficult to avoid the suspicion that the [fees increases] are actually designed, at least in part, to reduce the number of applications for care orders..."

Perhaps the strongest response, however, has come from Mr Justice Coleridge, a senior Family Division judge, in his address to a conference of family lawyers in April 2008.<sup>11</sup> He said that the time had come for family judges to speak out publicly in protest at the way the family justice system had been, and was being, mismanaged and neglected by government. "Government's treatment of the system is nothing less than death by a thousand cuts... 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. 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 Basingstoke the number of child care lawyers have dropped from 18 to 3. In time they will disappear from the high street and they will never come back... ." Local authority children's departments were "...desperately short of social workers, so that those there are, are stretched beyond breaking point and unable to carry out their real function of supporting vulnerable families in their homes". Mr Justice Coleridge was withering in relation to the court fees increase: "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 an 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... 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."

These forebodings have proved well founded. First, in the front page leading article of The Law Society Gazette of 21<sup>st</sup> August 2008 it is reported that, in the period from the beginning of April to the end of July this year, applications for care and supervision orders in England and Wales have plummeted by 25% compared with the same period last year. The figure for the Inner London Family Proceedings Court for the six month period to the end of August 2008 was 26.5%. Then, on the 4<sup>th</sup> September 2008, the Guardian reported the existence of a £90million 'black hole' in the court service budget, attributable in significant measure to "a sharp drop" in public law care proceedings.

A major recent study carried out by Professor Judith Masson and her colleagues at the University of Bristol for the Ministry of Justice, found no evidence that care proceedings were initiated unnecessarily.<sup>12</sup> Unsurprisingly perhaps, the report did demonstrate "a statistically significant relationship between the number of complexity factors and the length of proceedings".

There is abundant evidence that local authorities sometimes fail to intervene to protect vulnerable children. Earlier this year, the File on 4 programme on Radio 4 considered three recent cases in Hackney, Newcastle and Swansea where young children had been killed by family members. Speaking on the Today programme on 28<sup>th</sup> January 2008, in relation to the launch of the new Drugs and Alcohol Court at the Inner London Family Proceedings Court, District Judge Nicholas Crichton told John Humphries that cases were often brought to court too late and that, by the time a child's case was before the court, significant and sometimes irreparable damage could have occurred. Sometimes this happened because of buck passing between authorities or between agencies within the same authority. Indeed the new drugs court had come about because of practitioners' widespread experience of such cases which, because of the fragmentation of services, were often not dealt with effectively. Despite the official rhetoric encouraging joined up thinking in accordance with the Every Child Matters agenda, the countervailing pressures on new public managers to protect their own turf, to make problems go away and to burn a hole in somebody else's budget are very powerful. District Judge Crichton also made the point that progress in these cases would need to be reviewed by the court at regular intervals of perhaps two or four weeks. I was put in mind of a case that was featured two years ago on the File on 4 programme, 'Inside the Family Court'. The case involved two very young parents initially overwhelmed by the responsibility

of looking after four young children. District Judge Crichton presided throughout and I represented the mother. The process took far longer than it should have done because of a number of changes of social worker, the inconsistent case management by the local authority and the need for, and consequential delay involved in engaging, external assessors. Eventually, after the family rallied round, it was possible for the children to return to their parents' care. However, if the case had not been regularly brought back to court before the *same* judge at each stage of delay, the process would have taken far longer and the children would have spent further unnecessary and damaging periods of time in care. It is this reality, and the need for flexible proactive management of cases by the courts, that the PLO wholly fails to take account of.

How has such destructive absurdity come about? How can an avowedly social democratic government, that prides itself on having lifted something over half a million children out of poverty, so terribly undermine the system of children's justice in an area where the stakes are so high?

Behind this government's modernising maquillage swirl malign and sinister forces which have caused profound destruction, demoralisation and waste throughout the public realm, not least in this area of children's justice. "Central planning may have failed in the former Soviet Union but it is alive and well in Britain today" observed Onora O'Neill in her 2002 Reith lecture "A Question of Trust".<sup>13</sup> "Detailed instructions regulate and prescribe

the work and performance of health trusts and schools, of universities and research councils, of the police force and of social workers". Professor O'Neill argued "that many public sector professionals find that the new demands damage their real work. Teachers aim to teach their pupils; nurses to care for their patients; university lecturers to do research and to teach; police officers to deter and apprehend those whose activities harm the community; social workers to help those whose lives are for various reasons unmanageable or very difficult. Each profession has its proper aim, and this aim is not reducible to meeting set targets following prescribed procedures and requirements". The culture is damagingly diversionary in that "professionals and public servants understandably end up responding to requirements and targets and not only to those whom they are supposed to serve".

Social workers frequently complain that the incubus of key performance indicators and star ratings procedures inhibit them from carrying out their real work: that of direct engagement with vulnerable children and families. All too often what is measured is merely quantitative rather than qualitative. For instance, provided a particular meeting has taken place then the box can be ticked, even if it has achieved no useful purpose in advancing a child's interests. Andrew Cooper, Professor of Social Work at the Tavistock Clinic, argued persuasively in 2000 that "Professional self-discipline or self-regulation has been recast as a form of social surveillance; self-examination and an ethos of learning from experience has been transmuted

into one of public blaming, naming and shaming".<sup>14</sup> He illustrated the intellectually disabling effect of such processes: "During a case based group discussion for a comparative research project which examined child protection practices in different European countries, an English child protection social worker asked 'But what do we have to go on in our work, without the child protection procedures?'. This young man, not very long qualified, was completely sincere in his perplexity. The logic of proceduralism had, in his case, become identical with the logic of professional meaning and values. The methodologies and intellectual habits which constitute proceduralism, audit, quality assurance and all the paraphernalia of new public management are notable for the doubly alienating manner in which they can colonise both psychological and social space: they refer us to external rather than internal criteria for assessing and evaluating our work, but they also assume occupancy of these internal spaces, so that externality becomes the principle by which internal life is lived and reproduced."

The impact of the target culture, in promoting risk averse reactive practice, in militating against intellectual curiosity and appropriate professional development was also remarked upon by Lord Evans when he was chair of The Council for Museums, Archives and Libraries in 2001: "The demand for accountability has spawned a stifling undergrowth of targets, measures and inspection. Is it not particularly

ironic that the sector is grossly over-regulated inhibiting the very creativity and innovation for which it should be known?"<sup>15</sup>

David Marquand who, as a former Labour MP, European administrator and academic, is well placed to make this evaluation, demonstrates in his book *Decline of the Public* that there is a close link between neo-liberal economics, adopted and internalised by New Labour, and the new system of regulation of the public domain: "At the heart of the neo-liberal economic vision lay the notion of the rational, self-interested individual utility maximiser. But for the champions of the public domain, individuals are not only, or in all circumstances, self-interested utility maximisers. They can and do transcend individual utility maximisation for the sake of the public interest; they are motivated, at least in part, and for some of the time, by a sense of service and of civic duty. Individual utility maximisation reigns only in the market domain; in the public domain it does not. For the neo-liberals, a public domain so defined was an impossibility, as was the notion of a public interest which was more than the sum of private interests. The proposition that it was possible to transcend individual utility maximisation – except, of course, in the private domain – was absurd. Those who claimed to do so were camouflaging self interest in an inherently deceitful rhetoric of civic virtue".<sup>16</sup>

Further and very damagingly “the intrusion of market measuring rods and a market rhetoric may twist [the values of the public realm] out of shape and corrode the ethics they embody... Instead of seeing themselves as servants of the public interest [practitioners] may become market or quasi-market agents, maximising their interests in a market mode and sacrificing the public interest in the process”. How true! How often over the years have I heard social workers complaining that their “proper” work was being obstructed by the demands of managers to produce materials to satisfy star ratings or to comply with key performance indicators? The regime potentially corrupts everyone, not least the new public managers. Fancy salaries are available to those prepared to disengage their consciences and parrot vacuous regime Newspeak, such as “best value” this or “quality assured” that.

Thus New Labour has unleashed upon the public realm a toxic combination of neo-liberal moral fervour and market dogmatism entirely antipathetic to the openness, empathy, intellectual curiosity and rigour required in direct work with complex families.

I was recently acting for a young child in care proceedings. The skilful, sensitive and challenging approach by a very experienced social worker, who assisted the mother effectively to address various difficulties of which drug misuse was a symptom, led to the eventual successful rehabilitation of the child to the mother. The social worker attended one hearing clearly rather down in the mouth. The management

consultants had been in to her department and her working life had been turned upside down. She and her fellow team members supported each other very effectively and such support was very important to each of them when they returned to the office from a difficult day in court, from a challenging visit or when writing a demanding statement. Their office was open plan but their individual workstations were personalised with photographs on their desks and prints on the walls and so forth. Each knew where everyone else was. No more. They had been "hot-desked". Someone had decided that they would work more efficiently if their work places were anonymised so that any member of the department could just sit at whichever desk were available. The spirit and coherence of the team had been undermined and its members felt devalued. Is this, then, what we are reduced to: hot-desks for the many; sofa cronyism for the elite few? There is surely a form of madness here that permits those on whom we rely to provide safety and succour to the most vulnerable to be treated with such callous disregard. No wonder many of the best walk away.

It matters little now whether New Labour's adoption of neo-liberal market nostrums came about through genuine ideological conversion or strategic calculation. The reality is that its neurotic pursuit of "permanent revolution" through "unceasing modernisation" (their PR guru Philip Gould's phrases)<sup>17</sup> has wrought terrible, and in the case of children's justice perhaps irretrievable, damage. Much of what passes for

“modernisation” is antediluvian bunkum. Should we then just despair? No. The fight back has already begun.

John Seddon, in his new book *Systems Thinking in the Public Sector*, explains the sorry story of how we have reached the current wretched pass and what can be done to put matters right: “If investment in the UK public sector has not been matched by improvement, it is because we have invested in the wrong things... we think inspection drives improvement, we believe in the notion of economies of scale, we think choice and quasi-markets are levers for improvement, we believe people can be motivated with incentives, we think leaders need visions, managers need targets and information technology is a driver of change. These are all wrong-headed ideas. But they have been the foundation of public sector reform... the reform that is most needed is the one that is never talked about – that of the regime itself, the vast pyramid... of people engaged in regulating, specifying, inspecting, instructing and coercing others into doing the work to comply with their edicts.”<sup>18</sup>

Seddon's analysis is all the more powerful for the practical examples he gives of his detailed examination of services such as housing benefits and lettings, adult social care and policing. The ‘regime’ has been an expensive disaster because it is self-reverential, inward looking and based on ideology rather than knowledge: “Every public service about which we... have knowledge has been burdened with specifications,

regulations, targets and the like which are actually making performance worse. If you wonder where the money has gone, much of it has been spent on undermining performance and morale... Let's be clear. This is not an argument for improving the regime's specifications, it is an argument for radically changing the regime to get rid of the specifications altogether."

He demonstrates convincingly how the "deliverologists" of New Labour have become the ultimate producer interest. Their method of command and control managerialism is preoccupied with internally generated process, much of it created by management consultants with their grandiose and frequently failed IT systems. In *Plundering the Public Sector*<sup>19</sup> David Craig, himself a consultant, shows how £70 billions of public money has been largely wasted in this way. His verdict is unsurprisingly uncompromising: "Through their dogmatism, dishonesty, naivety, self-interest and incompetence, New Labour have created a national emergency that is costing more money and ruining more lives than other more headline-grabbing disasters like the Iraq War."

Waste is locked in to the regime's system so that costs rise remorselessly as the quality of service declines. Self-serving and self-deluding compliance with arbitrary and frequently artificial targets assume primacy over effective engagement with real people.

The systems theory favoured by Seddon begins by considering things from the stand point of the service user rather than provider. By studying demand and responding to real people's actual needs the Seddon team has helped bring about tangible improvements to several authorities' services, including substantially reducing the time taken to determine housing benefit claims and significantly speeding up the processing of planning applications. Efficiency gains are accompanied by cost reduction and enhanced citizen satisfaction. The Chief Executive of Aylesbury Vale District Council is certainly impressed: "A refreshing deconstruction of the control freakery of the current performance regime. It could do for thinking on business improvement what '*An Inconvenient Truth*' has done for climate change. It takes the argument to the 'deliverologists' and uses *informed analysis* and sometimes acidic rhetoric to debunk the command and control paradigm."<sup>20</sup>

It is instructive to consider Seddon's observations on the government's "Every Child Matters" agenda<sup>21</sup> in detail:

"'Every child matters' is a government initiative that requires all services dealing with children to report on activities associated with achieving the aim (that every child should matter). When you read the framework that the regime has produced, you have to wonder how something as important as child development has been turned into a mind-numbing plethora of activities and targets.

As reported to me by a parent and school governor, this is what happens on the ground:

*Inspection dictates: Healthy lifestyles are promoted to children*

*Action: Provision of fruit bowls at breaks*

*Outcome: Tick in the box*

*Reality: Sam (the fat kid) keeps on eating his lunch box full of crisps and Mars Bars (I know because Alice tells me! And the fact that she ate his apple)*

*Implication: Sam doesn't matter*

More importantly:

*Inspection dictates: Percentage of seven-year-olds achieving Level 2+ at 'Key Stage 2'*

*Action: Focus on training children to be good at answering maths exam questions*

*Outcome: Tick in the box*

*Reality: Carla missed art lessons because she had extra maths. Carla was brilliant at art but has now lost interest in it (she also now really doesn't like maths)*

*Implication: Carla doesn't matter*

The 'Every child matters' framework will lead to a spectrum of responses among those who work with children, from unthinking compliance to trying to do the right thing in spite of the reporting requirements and fitting descriptions of doing the right things into reports as best they can.

The perverse consequence... is that we will be less likely to do the right things. It illustrates the problems caused by treating a 'special cause' (the unpredictable) as though it is a 'common cause' (predictable). 'Every child matters' was developed in response to the Victoria Climbié affair. She was a child who tragically 'slipped through the net'. While it is true that the fragmentation of public services will predictably cause failure, to enforce a programme of activity for all is to fail to understand the nature and predictability of the particular kind of failure. It is to treat all children as though they have not mattered and will increase the risk that those who do 'matter' are neglected. It is also an affront to teachers, care workers and parents who will all, with justification, feel the framework is an implicit criticism of their current care for children. The framework is driving activity to satisfy the regime and not the needs of children; it undermines the very thing it sets out to achieve."

Seddon's final paragraph under the heading of "A better view of human nature" deserves to be quoted in full: "Finally, and perhaps most profoundly of all, the new architecture liberates public servants from the prison of suspicion and distrust that the current regime locks them into, demeaning their professionalism with simplistic targets and casting them, as self-interested producers, as part of the problem rather than part of the solution. By contrast, the assumptions that I use are no less rational, but they are positive rather than negative: the new structures assume that people are motivated more by pride in their work than by money,

that they are vocational – they want to serve – and that they are capable of using their own ingenuity and initiative. It is also to assume that, in delivering services to consumers and citizens, cooperation will serve our purposes better than competition. People's behaviour is a product of their system. It is only by changing the regime that we can expect a change in behaviour."

What worthier project could there be for Gordon Brown as he seeks to loosen his chains and rebut the unkind suggestion that the principal precept of the modernised Manse is: *To Them That Hath Shall be Given?* During his Scottish boyhood Mr Brown was apparently a keen rugby player and, if he watched this year's Six Nations' Championship, he will have had some chastening reminders of past mistakes as well as indications of a brighter future. He will certainly have been discomfited by the former international Eddie Butler's description of the Scotland versus England match as a "Stalinist horror"<sup>22</sup> and will have noticed that Scotland played throughout the Six Nations' Championship with mesomorphic brio but little craft or imagination. They scored just three tries in their five matches and were the least efficient team in utilising possession. They played like deliverologists trapped in a cul de sac of their own design. The Six Nations' tournament was won unexpectedly and gloriously by Wales who only a few months earlier had lost embarrassingly to Fiji in the World Cup but now had a new management team: Warren Gatland, a highly experienced and successful New Zealand coach, chosen in large part because of his emotional intelligence and

ability to communicate effectively with the players, and Shaun Edwards, his brilliant defence coach. These two people effectively challenged the players to get the very best out of themselves. Playing with freedom within a secure and disciplined framework, Wales were able to ally attacking flair with defensive solidity, scoring thirteen tries and only conceding two – a record for the Six Nations' Championship. Gatland and Edwards achieved success through encouraging innovation, thereby enabling the team to produce a quality of performance many probably did not realise they were capable of.

So, Prime Minister, you want a vision? Pick up the ball and run. You have nothing to lose but your ideological enchainment. There is an alternative. The long purse will not always prevail, as Wales' defeat of England demonstrated, and as George Orwell almost said: if there is hope it lies with Wales.

## Notes

1. *The Woman in White*, first published in 1860.
2. *Committee of Inquiry into the Care and Supervision Provided in Relation to Maria Colwell* London HMSO 1974 ISBN 0113205961.
3. s. 38(6) Children Act 1989.
4. 'A lecture in honour of Professor Mervyn Murch' delivered by Lord Justice Wall at the University of Cardiff on 30<sup>th</sup> November 2006.
5. <http://www.legalaidprocurementreview.gov.uk/docs/carter-review-p1.pdf>
6. *The Guardian* 15<sup>th</sup> March 2008. 'The atheist delusion',
7. *Family Law*. Reported in May [2008].
8. *The PLO guide to case management in Public Law proceedings*, Ministry of Justice, April 2008
9. <http://www.hri.org/docs/ECHR50.html#C.Art6>
10. <http://www.hri.org/docs/ECHR50.html#C.Art8>
11. *Family Law* Reported in May [2008].
12. *Ministry of Justice Research Series*, 4/08 March 2008. 'Care Profiling Study' by Judith Masson, Julia Pearce and Kay Bader with Olivia Joyner, Jillian Marsden and David Westlake, University of Bristol.
13. <http://www.bbc.co.uk/radio4/reith2002/lecture3.shtml>
14. *Soundings* Issue 15 Summer 2000 'The state of mind we're in'.
15. 'The Economy of the Imagination', New Statesman Arts Lecture, 27<sup>th</sup> June 2001.
16. Marquand, David *Decline of the Public*. Polity Press, 2004.

17. Gould, Philip. *The Unfinished Revolution* Abacus 1999. For a critique of these ideas see David Marquand, *New Statesman* 16<sup>th</sup> January 2006.
18. Seddon, John. *Systems Thinking in the Public Sector*. Axminster: Triarchy Press 2008.
19. Craig, David. *Plundering the Public Sector*. Constable 2006.
20. *New Statesman* 2<sup>nd</sup> June 2008.
21. The framework document can be found at [www.everychildmatters.gov.uk/\\_content/documents/Outcomes%20Framework.pdf](http://www.everychildmatters.gov.uk/_content/documents/Outcomes%20Framework.pdf)
22. *The Observer* 16<sup>th</sup> March 2008.



## Afterword

On the evening, in early September, that I completed work on this manuscript I stepped out, drawn by the omnicultural allure of the Old Kent Road. The rain had recently given way to a pleasing early autumnal freshness. My nostrils were tantalised by the rich aroma of Moroccan coffee and my ears beguiled by a number of gently modulated yet insistent conversations in Arabic.

How had my French Algerian client (let us call him Albert) earlier characterised the PLO as he sat, bewildered, in court, his beautiful baby in his arms, as the grumpy clerk testily and ponderously lumbered through a clunky and largely irrelevant case management document? "Vice de procedure!". Albert, who speaks several languages, was taken aback that the English legal system, which he was inclined to respect, could produce such an ugly, ineffectual process. It assails and demeans us all.

The Old Kent Road embodies change and continuity. Here was the millinery shop where credit transfers to Africa and the Caribbean now take place. There, where Raysy\* Johnson placed his bets, Al Jazeera will keep you abreast of world events 24/7. Vic\* Tucker, the undertaker, continues to receive a regular supply of customers and there are more butchers than in Jack\* Dodds' day. The great thoroughfare which unites Margate pier in the East with the seats of power up West need have no truck with the faddish New as it benignly accommodates true change within its imperturbable, magisterial and ceaseless arterial flow.

I returned to my office, the rain lashing harder now, but this time there was no escaping the billboard's brutal message: "mother kills baby placed on risk register".

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\* Ray, Vic and Jack are all characters in Graham Swift's Booker Prize winning novel "Last Orders" (Picador, 1996) set on and around the Old Kent Road.

## **About the Author**

Edward Lloyd-Jones has worked in Southwark since qualifying as a solicitor 30 years ago – first, for six years, at the local Law Centre and subsequently in legal aid practice. He has been a member of what is now the Solicitors Regulation Authority's Children Panel from its inception in the mid 1980s, and specialises in representing children and parents in public law care proceedings. Edward is a visiting lecturer at Royal Holloway, University of London.

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This pamphlet is intended as an urgent call to arms.

The Labour government is in the process of subverting the system of justice for children and their families embroiled in public law proceedings, through a deadly combination of legal aid cuts, court fee hikes, market dogmatism and reductionist protocols. The openness, empathy, intellectual curiosity and rigour required of, and willingly given by, all professionals who work in this field has been brushed aside in favour of a scientific formula which makes a mockery of common sense.

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