inflammatory. For example, adultery still invites the "wronged party" to name their spouse's partner in crime – a move that is advised against almost universally by family lawyers, particularly those who are members of Resolution.

"Today, focus should be on reaching fair and reasonable agreements around finances and children, yet the system instead encourages a ritual period of mudslinging and waiting around."

In my entire career as a family lawyer, I have not once named a co-respondent. There is not a single good legal or financial reason to drag a third party into the intricacies of a divorce. It serves no practical purpose, and offers no emotional benefits either. The idea that the innocent party will "have their day in court", to be proved the righteous victim, is quite simply myth and almost always discovered too late.

With a rise in litigants in person, it is easy to see how an unrepresented party could, fuelled with emotions and without the advice of a lawyer, tick the box and name the person they believe their partner is having an affair with. The consequences are significant, as this person is now a party to the divorce, and has to be included in that process, increasing costs and emotions.

The D8 form has made strides forward, but has missed an opportunity. There are parts that still reflect an archaic system – created in a time where couples had to have a serious and often dramatic reason to part ways. Today, focus should be on reaching fair and reasonable agreements around finances and children, yet the system instead encourages a ritual period of mudslinging and waiting around. Whether or not someone had an affair has absolutely no impact on how the finances are settled and who gets how much time with the children. So why does the form still ask for the sordid details of the relationship breakdown? The only way to avoid this is to wait a period of two years, which is just too long for some people, particularly those with children.

Many couples have a strong desire to separate in an amicable way, and would face far better odds of succeeding if the divorce petition did not ask them to point fingers at each other by choosing between adultery, unreasonable behaviour or desertion. The system demands that there is a right and a wrong person, which is entirely the wrong mindset to resolve a family dispute, and has larger implications for society and how to deal with and resolve family breakdown.

I am a Resolution lawyer and my job is to reach constructive solutions that work for everyone. Yet day after day I am battling with the emotional responses triggered by a form that is decades out of date. The 2017 case of *Owens v Owens*, in which the wife has effectively been locked into the marriage when her petition was rejected, has involved tens of thousands in legal fees as it proceeds to the Supreme Court. Days have been spent in court discussing whether the marriage is over, when common sense suggests that couples who want to stay together do not meet to discuss that fact at the High Court. Cases like this clog up the system and do nothing for the parties involved. We need a modern divorce system where a "no-fault" ground is an option, and where focus can be on solving financial and children matters. It is high time we made the D8 application for a divorce form at least one page shorter.

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Reform and digitalisation of the family courts

Sarah Wasaya *Stone King*

What progress has been made so far and what is yet to come?

It started with the introduction of the single Family Court on 22 April 2014 and the establishment of the regional divorce centres. Practitioners and litigants in person had to get to grips with the fact that, apart from non-urgent matters, all petitions (for divorce, dissolution and judicial separation) were to be filed at a regional divorce centre and not at the local court. This represented the first step in the de-linking of the divorce procedure from financial remedy matters.

Currently, in financial remedy cases, despite the initial application being filed at the regional divorce centres (and any consent order applications being dealt with there),

contested matters are allocated to the local courts. In complex cases, applications can be filed at the financial remedies unit (FRU) within the Central Family Court, which is comprised of judges specialising in family financial work.

The President of the Family Division, Sir James Munby, set out his vision for further reform, in his "18th View from the President's Chambers", where he provides details of the proposed Financial Remedies Courts (FRC). The FRC are to be piloted in Q1 2018 in London, the West Midlands and South-East Wales. This will be followed by further pilots in the remainder of the Midland circuit, the North-Eastern circuit and parts of the South-Eastern circuit.

The FRC will be part of the Family Court and will receive:

- applications for financial remedy under the Matrimonial Causes Act 1973;
- claims under Schedule 1 to the Children Act 1989; and
- claims under Part III of the Matrimonial and Family Proceedings Act 1984.

It is anticipated that this will be extended to include claims under the Inheritance (Provision for Family and Dependants) Act 1975 and the Trusts of Land and Appointment of Trustees Act 1996.

If the FRC are implemented then applications for financial remedy will no longer be filed at the regional divorce centres, but the FRC will be similar to the regional divorce centres in that applications are to be filed at regional hubs across England and Wales. Each hub area will have a lead judge who specialises in financial remedy cases. There will also be a national lead judge and a deputy; these positions will be filled by Mostyn J and HHJ Hess respectively. Hearings will be held at the regional hub and in Financial Remedies Hearing Centres within the hub area.

In his 18th View the President stated that his "core ambition" is to "improve significantly both the application of procedural justice and the delivery of substantive justice".

Substantive justice

The President has made it clear that FRC judges will need to have specialist knowledge of financial remedy cases, and circuit and district judges who already undertake financial remedy work and wish to continue to do so will be included in the pool of FRC judges.

Unfortunately, most if not all practitioners will have at some point in their career been before a judge who is not familiar with, or inexperienced in, financial remedy cases, which resulted in an unpredictable outcome for the parties. Currently, specialist family judges are only available at the FRU of the Central Family Court. The FRC aims to ensure that there is a consistency of approach adopted by judges across England and Wales.

"The new form A clearly sets out the different types of applications that can be made but the heightened level of legal language used is likely to cause confusion for litigants in person."

The President suggests that judgments by FRC in small and medium cases should be reported to increase transparency and predictability of outcome, thereby reducing the amount of contested cases.

Procedural justice

New form A

The FRC aims to provide greater efficiency by allocating cases to the right judge from the outset. This is to be achieved by the completion of the proposed new form A.

The new form A (annexed to the President's 18th View) requires the applicant to provide as much information about the complexity of the case as possible to assist with accurate allocation of the matter. However, several questions in the form A require detailed information (including an assessment of the nature and quantum of assets and income likely to be involved). It is unlikely that this information will be available to practitioners or litigants in person at that early stage in the process. This can mean that many questions will be left blank or stated as not known.

The new form A clearly sets out the different types of applications that can be made but the heightened level of legal language used is likely to cause confusion for litigants in person.

The President was due to present the new form A before the Family Procedure Rule Committee on 6 February 2018 and the outcome is much awaited.

Standard orders

The President explained in his 18th View the importance of standardised orders as a means of increasing procedural justice and efficiency. He issued standard financial and enforcement orders on 30 November 2017 and an amended version correcting a minor error was issued on 22 January 2018.

The President also explained that the positive impact of the standard orders would be greatly enhanced by the modernisation of the court and he confirmed that "we will fairly soon be seeing real changes in our IT as the digital court of the future becomes a reality".

Digital courts

A pilot for a fully digital divorce system is now in place and 130 online applications were received in the first

week. The pilot enables parties to file petitions along with the relevant documents and payment online. Currently, practitioners are not able to use this service but it is intended that they will be able to do so in the near future.

In respect of financial remedy cases, the aim, confirmed by HMCTS, is to have a fully paperless process from start to finish.

The way forward

Some family courts have already implemented parts of e-working, including electronic filing of documents and using electronic bundles in court hearings. One court even reported displaying e-bundles on court room screens using Clickshare (which is often used in criminal courts). It is intended that e-working will become a requirement in the family courts in the future.

A public family law project has been introduced to "support seamless digital working… so that evidence can be submitted, bundled and shared electronically… also enabl[ing] in-court digital presentation of evidence". The courts are also looking at having wi-fi and dual screens in court rooms. This is intended to be piloted in public family law cases initially and then extended for use in private family law cases.

It is clear that a substantial amount of planning to modernise the courts has been done along with some implementation, but there is a long way to go before we see fully digital family courts.

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New ways to help stuck families

Amy Starnes *Mills & Reeve LLP*

A recent Cafcass study of private law children cases that return to court revealed the main underlying parenting issues – and had led to a number of initiatives to try to help the children involved

Towards the end of last year Cafcass published the findings from a piece of research it had carried out on private law cases that returned to court. The aim of the study was to investigate the scale, patterns and circumstances behind these cases and how they might benefit from alternative dispute resolution.

The study

Cafcass found that 30% of the 40,599 private law applications it received in 2016-17 had been to court before, and 63% of these cases returned within two years of the previous case being closed by Cafcass.

The study looked in detail at 100 cases and identified four principal reasons for cases to return to court: high conflict between adults, safeguarding concerns raised by parties, changes in life circumstances and the child's wishes and feelings.

"The most common reason for cases returning to court was due to high conflict between adults (39% of the return cases identified)."

High-conflict adults

The most common reason for cases returning to court was due to high conflict between adults (39% of the return cases identified). These cases were characterised by high levels of mistrust, and parents who had difficulty communicating and working together.

In many of these cases the court was effectively micro-managing family life: parents had precise orders which set out the specific arrangements for them to follow, such as the logistics and practicalities around travel.

Many of these cases involved allegations and counter-allegations of harm to children – which, once investigated, appeared to have little substance and were rehashing of previous concerns.

Parents' attitudes were such that they were often not content to proceed with agreements made out of court and instead