

## 2. Introduction

This is the second edition of the Family Bench Book, which was first published in June 2001. It has been provided to assist all full and part-time judiciary, particularly in the county court, in the exercise of the family jurisdiction. It has been prepared with the needs of the less experienced judge uppermost in the minds of the writers.

This is not intended as a textbook on the law. It is a guide to the judicial function. It is written on the assumption that the reader will have access to the *Family Court Practice* (the 'Red Book') or some other recognised practitioner's text.

Judges will also find helpful the *Protocol for Judicial Case Management in Public Law Children Act Cases*, *the Framework for Assessment of Children in Need and their Families*, *The Private Law Programme*, *Violence at Home* (a joint inspection of the investigation and prosecution of cases involving domestic violence). Further all the papers which have been delivered at the Judicial Studies Board's family law seminars are available on the Board's Training Website: [www.jsboard.co.uk/jsbtraining](http://www.jsboard.co.uk/jsbtraining).

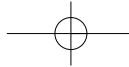
Different judges have different jurisdictions. Those who exercise all jurisdictions will inevitably find overlap within this Bench Book. This has been done to allow those with more limited jurisdictions to find what they need in the sections to which they will naturally refer. Moreover, for the same reason, you may discover some duplication with other Bench Books.

Much of what you will find in this Bench Book does not have statutory or other authoritative force. It is the distillation of practitioners' experience offered in the form of what it is hoped will be useful hints. It certainly is not there to curb or direct the wide statutory discretions given by the legislation; it is offered, especially in the earlier sections, as suggested issues and questions that judges might find it helpful to ask themselves.

### **Family life in the 21st century**

Various social trends shape the population at the beginning of the twenty-first century.

- Marriage rates have declined markedly over the last 30 years and the age of first marriage has risen. The proportion of those marriages which constitute a second or subsequent marriage for one of the parties has increased. Only just over 50 per cent of the adult population is currently married; 30 per cent is single. The number of divorces has remained high (around 150,000 annually) since the mid 1970s, and an increasing proportion of marriages (but still the minority) end in divorce.
- Cohabitation has increased. Approximately 20 per cent of the adult population now cohabit. Couples cohabit before and instead of marriage. Cohabitation rates are highest amongst those aged 25-35, and amongst people who have divorced. Step-families are more likely to cohabit than marry.



- Over 40 per cent of births are now to an unmarried woman, compared with only about 10 per cent a generation ago.
- Each year about 30,000 women receive regulated assisted reproductive technology treatment and 9,000 children are born.

Although these are general trends, there are wide variations within society. People of Indian, Pakistani or Bangladeshi origin are far less likely to cohabit or have children outside marriage than people who are White, Black Caribbean or of mixed parentage.

### **Families**

Families are defined in many different ways, according to different contexts and for different purposes. Definitions of family have altered over time, reflecting changes in societal acceptance of relationships outside marriage, between people of the same sex and the changes in family practices consequent on parental separation, re-partnering and caring across households.

The Office of National Statistics (ONS) is the main source of data on family types and composition, marriage, divorce, birth etc. It uses the following definition:

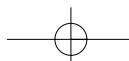
‘A family comprises a group of people consisting of a married or cohabiting couple with or without child(ren), or a lone parent with child(ren), where children are either dependent or non-dependent. Children include those over the age of 18 but dependent children are under 16 or under 18 and still in full time education. Cohabiting couples include same sex couples (unless otherwise stated). Those people not in a family include people living alone or groups of people who live together who may or may not be related.’

In 2001, there were 14.7 million families in England and Wales; 84 per cent of the population lives in a family. Just under half these families have dependent children. The ONS has not collected separate data for families where three or four generations live in the same household. Such arrangements are thought to be more common in the Asian community and have implications in relation to the care of children, exclusion orders and reallocation of property on divorce or death.

### **Dependent children**

Two-thirds of families with dependent children are married. In about 10 per cent, the parents are cohabiting. A quarter of families with dependent children are lone parent families, and those headed by lone mothers out number those headed by father by 12 to 1. There are nearly 650,000 stepfamilies, and about 40 per cent of these are cohabiting couples. Nearly a million children (10% of children) live in stepfamilies.

ONS does not report separately numbers of cohabiting couples in same sex relationships but will provide figures for civil partnerships following their introduction in December 2005. Similarly, the numbers of children being brought up in such families is unknown.



### **Family changes during childhood**

Family life is quite fluid for some children. It has been estimated that more than a quarter will experience their parent's divorce before they are 16. A higher proportion is likely to experience the separation of their cohabiting parents. Many separated parents re-partner; a quarter of lone mothers marry within eight years of giving birth.

Where parents are unmarried, data on birth registration gives some indication of their parents' relationship. In over 60 per cent of births to unmarried women, the parents were cohabiting at the time of birth registration, and in another 20 per cent the father joined in the registration but lived elsewhere. Only 17 per cent of these births (seven per cent of all births) were registered by the mother alone. It is now only in these cases that the father will **not** have parental responsibility automatically (Children Act 1989, ss. 4(1)(a) and(1A)).

Amongst the non-partnered parents were fathers who were described as 'closely involved' by the mothers. Although living separately, these fathers were more like cohabiting fathers, with similar rates of birth registration, and financial support and contact after separation. Four-fifths of these separated fathers were having contact with their children, but fewer than half were paying any child support. Rates amongst other non-partnered fathers were much lower.

### **Adult children**

Children, particularly sons, are older when they leave home than in earlier generations. Over half of males aged 20-24 and a fifth aged 25-29 were still living in the parental home in 2003; the figures for women were 37 per cent and 10 per cent respectively.

### **Sources and further reading**

For further information on families, see the ONS website at <http://www.statistics.gov.uk/cci/nugget.asp?id=1163>