Resolution Conference 2025

'The Road Ahead: The Journey So Far'

Sir Andrew McFarlane – President of the Family Division

It is a true pleasure to be invited to address this large gathering of Resolution members at your annual conference, and to be doing so in my home city of Birmingham. Little did I think when I started in practice at the Bar here in 1978 that I would be standing before you today. Indeed, as I did not practice in Family law then, and as Resolution (then the SFLA) was not founded until 1982, it would have not been a possible thought!

In the ensuing years so much has changed in the field of Family Law. It is particularly heartening to have watched Resolution go from strength to strength during the first 40 years and more of its existence. Based on clear and sound professional standards, its aspiration to adopt a non-confrontational and constructive approach to separation and divorce has blossomed and endured. It is now impossible to think of the Family Justice landscape without the presence of Resolution and its members at the heart of all that goes on.

That perspective, of looking back and looking forward, fits well with the words that now follow. In June 2020, as we began to move out of the first Covid lockdown, I issued guidance under the snappy title of 'The Road Ahead'. This was essentially a set of pragmatic and procedurally focussed parameters for the operation of the Family Court in the coming months.

A year later, in October 2021, I addressed an international family law conference in Jersey. In that speech my focus was on more substantive issues. In my time with you today, I would like to think back to those two points with the aim of seeing, in the most general terms, where we have got to and, more importantly, where we are going in the Family justice system.

I have on many occasions spoken of the truly heroic way in which so very many people, be they staff, lawyers, social workers or judiciary, did so much to support continued

access to Family Justice during those most difficult times. Despite those efforts, a substantial backlog of cases developed between 2020 and 2022. Things were not helped by the fact that before Covid our unresolved caseload for both public and private law children cases had grown. In public law this was due to a substantial increase in applications being made by local authorities, during what became known as 'the care crisis', and in private law the increase coincided with withdrawal of legal aid from many cases and the rise in the number of litigants acting in person.

The coincidence of these factors with the Covid pandemic led to case volumes which were, at their height, at 12,500 open public law cases in December 2022 and 52,800 open private law cases in August 2021. The 'road ahead' from June 2020 turned out to be a long and hard one, but we have collectively achieved a good deal in the ensuing five years so that the open case load in public is currently around 10,000 and in private law it is around 37,400. That is a 20% reduction in public law and around a 30% reduction in private law cases. Case levels have not been that low since July 2017 and June 2019 respectively, and the good news is that there is no sign that this direction of travel will change in the coming months. This is a real achievement and I am most grateful to one and all for the hard work and sustained focus they have deployed in, to pluck a phrase or two from the ether, 'making every hearing count' and 'keeping the cases short'!

Turning to more substantive issues, in my opening words in Jersey in 2021 I observed that I had been President for some three years and, if I were to go on to, what was then, the statutory judicial retiring age of 70, I was roughly half-way through my term of office. With that perspective I tried to identify what my priorities were for the coming period before, as I said, 'I hang up my wig and flashy gown'.

Since then, the timescale has shifted a tad. In March 2022 the judicial retirement age was raised from 70 to 75. Thus, my 70th birthday came and went last year and I am still in the job and, although people regularly enquire when I am going to retire – some with a marked tone of yearning in their voices – I have not set a date and I am still, therefore, in (indeed well on 'in') the second half of my time in this role.

What then were those priorities back in 2021? Well, they did not include matters that would always be part of my 'to do' list, for example implementation of the Public Law

Working Group's recommendations for care proceedings and the continued rollout of the HMCTS digital Reform programme. I also committed to continuing to promote a range of initiatives aimed at addressing 'the all-embracing need to protect and enhance the well-being of everyone involved in the delivery of family justice'. and what I described as 'moving the Family Court out of a silo, so that its work is seen as being of equal importance and standing with that of the Criminal and Civil courts'.

Having, thus, set aside almost everything that was actually on the 'to do' list, in a manner in keeping with the 'what have the Romans ever done for us' scene in 'Life of Brian', I focussed on just two priorities. The first, about which I spoke little in Jersey, was 'Transparency' and the second, on which I waxed at length, was 'parental dispute resolution: the need for a new approach'. The overall title of my talk was 'Supporting Families in Conflict: There is a better way'.

So, where are we now, some 3½ years later. On 'Transparency' much has been achieved. Piloting of a scheme, using a 'reporting restrictions order' to permit journalists who attend a Family Court hearing to report what they observe, subject to maintaining the confidentiality of the children and parties, has successfully concluded and the scheme is now part of business as usual under the court rules in all parts of England and Wales. That this has been landed successfully, and in such a short time, is very much due to the leadership and guidance of Mrs Justice Lieven and Jack, now District Judge, Harrison, and to the few key journalists who have supported the project and regularly published reports of individual cases.

But being transparent is about much more than simply allowing a journalist to report what they see. Being transparent is an attitude of mind that should infect all that we do. The aim is to be open and be seen, rather than being closed and hidden. This involves talking in the public space and in the media about what happens in the Family Court. It involves leadership judges inviting local media representatives and local MPs into the court building and explaining who we are and what we do. It involves having access to and then publishing accurate data. This is very much work in progress and it would be a mistake to think that, with the rule change about journalists now in place, we have, in some way, 'got Transparency done'. Whilst what has occurred thus far has been a great achievement by all those involved, be they judges, lawyers, court staff or

journalists, there is still much to do and, in the sense that 'being transparent' is a continuing state, the work can never be said to be finished.

I wish, if I may, to spend a little longer describing the second priority and the work behind it has, in the collective view of all involved, shown that there is indeed a better way of supporting separating parents who turn to the Family Court when they are in dispute. I am dwelling on this aspect again today because I consider that this is the future of Family justice with regard to separating parents.

In my Jersey speech, I identified two strands. The first, which was to highlight a report of the Family Solutions Group, chaired by Helen Adam, entitled 'What about me?' in which a whole range of non-court interventions to support parents was identified[1]. I will turn to that shortly. The second strand was a new model for court proceedings which was to begin being piloted in North Wales and Dorset in early 2022. Whilst we all thought that the new model, which had been developed by a small group led by HHJ Martin Dauncey in Dorset, looked worth pursuing, no one understood just how effective it would be, or what a radical difference it would make to the court experience – both for children and families, and for the professionals involved.

The pilots were given the working title of 'Pathfinder', which is no more than another way of saying 'pilot', but the title has stuck and, in a way, the model is a means of helping parents 'find a path' out of the difficulties that they may be in. Be that as it may, Pathfinder succeeded in its first two courts, went live in two bigger centres, Cardiff and Birmingham, this time last year, and is now being rolled out in Swansea and SW Wales, and in Leeds. It is due to be extended to some 4 or so other DFJ areas in the current financial year, so that by March 2026 around 10 of the 43 DFJ areas will have Pathfinder and, in particular, it will cover the whole of Wales. Whether that is maintained, and, importantly, whether it is then rolled out to all of the remaining courts in England, depends on the outcome of the current Treasury Spending Review for 2026 onwards.

The traditional model in England and Wales for those private law cases that are not resolved by mediation or otherwise, has not radically changed down the years. An

[1] https://www.familysolutionsgroup.co.uk/what-about-me/

application is made, statements are filed, the judge may then ask for a 'welfare report' from CAFCASS or CAFCASS Cymru ['CAFCASS'] which may be available for a final hearing some 6 months or more (and it is often a lot more) after the application was made. There may then be a contested hearing lasting one or two days before the court makes a decision. That decision is likely to have been heavily influenced by the independent professional evidence of the CAFCASS officer, whose input was not available until a comparatively late stage in the process – by which time a good deal of emotional and other energy will have been spent by the parties in 'fighting' their corners, with the child in the middle of it all and the clock ticking on and on.

In essence, what Pathfinder does is to obtain a full report from CAFCASS **before** any court hearing takes place at all, so that, at that first hearing, the court and the parents have an independent professional social work appraisal of the situation, which, importantly will include an account of the wishes and feelings of the child or children. The report is called a 'Child Impact Report' and the discussion at the hearing, instead of 'what do you say Mr Smith/what do you say Ms Smith', is 'is this a fair account of where you are? Well look at the impact on your child of what you two are doing. What is the best way of reducing that impact? What is the best way forward'. It is a problem solving approach. Rather than being litigant-led, it is child-led.

Most cases resolve at this short first hearing. Some are resolved by the court making an order (where the report is clear), without any hearing at all (but giving the parties 'liberty to apply'). If there is to be a further hearing, it can often be listed in two or three weeks and will last only a couple of hours as the focus is on dispute resolution, rather than being a post-mortem on the adult relationship.

Pathfinder grew directly out of the MOJ's influential and important report on 'Assessing Risk of Harm to Children and Parents in Private Law Children Cases' ('the Harm Panel Report') of June 2020[2]. I have therefore been keen to understand how the new model engages effectively with issues of domestic abuse (which are present in some 60% of our cases) so as to protect children and victims when this is necessary. It has been greatly reassuring to meet with local domestic abuse professionals in each of the pilot court

[2] https://assets.publishing.service.gov.uk/media/5ef3dcade90e075c4e144bfd/assessing-risk-harm-children-parents-pl-childrens-cases-report_.pdf

centres and to hear from them the view that Pathfinder is more effective in this regard than the current model of working. An essential part of Pathfinder is for there to be an enhanced and effective local domestic abuse support network. Additional funding is provided for this. There is a close and regular relationship between the local DA teams and the courts – in contrast to the way of working hitherto – and, from my perspective, it seems that each is learning from the other as they move forward with the project. I am also impressed that Pathfinder has the support of the national Domestic Abuse Commissioner for England and Wales, Dame Nicole Jacobs.

HHJ Christopher Simmonds, who, as DFJ for Dorset, has 3 years' experience of the model under Pathfinder, sums it all up by saying that he now feels that he makes 'safer decisions without delay'.

I have spent some time on Pathfinder because I really do think that it is 'the future' for private family law. It is not a change in the law, but it is a new way of working, which focusses on the child, and is one that puts the courts and the parents in a position of knowledge and insight at the very start of the process, in contrast to our current system where such understanding may only be available getting on for a year after the start.

Moving on, and, you will be relieved, gathering pace, the 'What about Me?' recommendations were taken up by the Ministry of Justice and distilled into a policy statement issued under the previous government in February 2024[3]. All the signs are that, despite the change of government, these matters of policy remain intact but, as with everything, the current fiscal circumstances must inevitably impact on the ability to take each of them forward at present. It is therefore welcome that a central element in the proposals is being funded and that is the development of a web resource, which will sit within the Gov.uk website, aimed at providing detailed, neutral and authoritative information, guidance and advice to separating parents. Such a resource has long been called for and early prototypes that I have recently seen indicate that if and when this goes live it will be a very valuable innovation.

[3] https://www.gov.uk/government/consultations/supporting-earlier-resolution-of-private-family-law-arrangements/outcome/supporting-earlier-resolution-of-private-family-law-arrangements-government-response

Before leaving private law, I would simply flag up some recent milestones on the 'road ahead'. Firstly, the toolkit that I have published jointly with the FJYPB for judges to encourage and support them in writing to children in either public or private cases[4]. This is a very valuable document which has the potential to change the culture and to make the sending of a short letter from the judge to a child the norm in all substantive cases.

Secondly, the Family Justice Council has published guidance on 'Alienating Behaviour'[5]. This is the fruit of a lengthy period of discussion and consultation. I very much hope that it will provide much needed guidance on the path that may be followed in cases where allegations of alienating behaviour are raised.

Child Protection

In terms of the law relating to child protection, we are currently at a stage of consolidation and progress in applying the recommendations of the PLWG aimed at ensuring that local authorities only apply to the court for a public law order when they have thoroughly assessed the child's circumstances and the options for intervention other than coming to court. This approach has landed well, and the volume of public law applications has reduced significantly. Courts are now, also, far more frequently accepting pre-proceedings assessment work undertaken by, or on behalf of, the local authority, so that such assessments do not need to be repeated (ie are not 'necessary') within the court process. These developments, along with the concerted effort that is being made by one and all to re-connect with the structure and targets of the Public Law Outline, are producing real gains so that, as I have explained, the backlogs are reducing and we are better able to determine these most important cases within a sensible timetable for the child.

One point, however, on public law does require mention in any address on the 'journey so far' and that relates to FDAC, the Family Drug and Alcohol Court. The essence of FDAC is that where a parent is suitable for, and willing to engage in, therapeutic intervention, an expert team works with that parent with the aim of achieving sufficient

[4] https://www.judiciary.uk/wp-content/uploads/2025/02/Writing-to-Children--A-Judges-Toolkit-V1.7-1.pdf
[5] https://www.judiciary.uk/wp-content/uploads/2024/12/Family-Justice-Council-Guidance-on-responding-to-allegations-of-alienating-behaviour-2024-1-1.pdf

change in their addictive behaviour by the time of the final care hearing so that the care plan will be one of rehabilitation rather than adoption.

For over 15 years it has been acknowledged that, for the few parents who are suitable candidates, referral to FDAC can be a life-changing intervention to the benefit of the parent, the child who is the subject of proceedings, any older children who have not yet been adopted and those that may be born to that parent in the future. FDAC has been the subject of more research than any other aspect of Family justice. The results are uniformly positive, both in human terms but also financially. FDAC saves the State money so that for every pound spent, over £3.20 is said to be saved[6]. There should be an FDAC court in every area, yet, frustratingly, the number remains at around 20% - with an FDAC opening in one area often coinciding with the depressing news that an existing FDAC in another area has had to close.

The penny has recently dropped with me that in almost every case, whilst the presenting problem will be one of addiction, the underlying history will be one of chronic domestic abuse. If that is right, then, even in cases where the victim has not become addicted to drugs and/or alcohol, the FDAC model may well be a valuable channel to enable a parent to break the cycle of abuse. Domestic abuse is, rightly, a high priority issue for government and I have been keen to promote the 'DA' in the middle of FDAC, not only as a means of addressing 'drugs and alcohol', but also cases where the 'DA' stands for domestic abuse. It therefore remains my goal for there to be an FDAC in every court area.

A Digital Justice System

And now for something completely different… The Judicial Review and Courts Act 2022 established the Online Procedure Rule Committee ['OPRC']. So what, you might say, has that to do with Family justice? The answer is 'quite a bit'.

Those in England and Wales will be all too familiar with the near decade long roll out of digital programmes for each element of the Family Court's jurisdiction. When 'Family Private Law' goes live across the country later this year, we will be fully digital so far as the Family Court process is concerned. Whilst there will continue to be a need to

[6] https://fdac.org.uk/cost-benefit-analysis/

improve the functionality of these programmes, this will be a very significant achievement and one which, looking to the future, puts Family justice in a good position.

But the concept of there being a digital justice system is not confined to what I might call 'the court bit'. This is where the OPRC comes in.

The vision for the OPRC, which is driven enthusiastically forward by Sir Geoffrey Vos as Master of the Rolls, is a wide one[7]. In essence the idea is that there will be one point on the web to which any citizen will go if they have any potential dispute in any part of the jurisdiction covered by the civil or family courts, or the tribunals. That one point of entry, a 'funnel' is a useful metaphor, would ask a series of questions aimed at identifying the nature of the dispute and, bit by bit, as the individual navigates a path down into the funnel, they will encounter information, education, and signposting to relevant dispute resolution resources. Whilst the end of the funnel will be the issue of court or tribunal proceedings, the aim is to assist the potential claimant to resolve their dispute without getting that far. But, if proceedings are necessary, then, because of the data that will have been uploaded during the journey thus far, any claim form can be populated automatically from that information.

The aim of the digital process is to draw together all of the existing pre-court dispute resolution provisions into one smooth operating system, governed by rules and guidance issued by the OPRC.

The OPRC, which has three judicial members (the MR, the Senior President of Tribunals and the President of the Family Division) and three suitably qualified non-judicial members, but is supported by a substantial sub-group structure and MOJ civil servants, now has statutory authority to make rules for civil possession proceedings and for Family financial remedy proceedings. This is an exciting development and one which has my total support. But that support is given on the basis that a keen eye must be kept on the interface between the respective roles of the OPRC and the Family Procedure Rule Committee.

[7] See, for example, 'The Digital Justice System: An Engine for Change' (May 2025) https://www.judiciary.uk/speech-by-the-master-of-the-rolls-the-digital-justice-system-an-engine-for-resolving-disputes/

Reference to the OPRC takes me on to consider the much wider topic of AI. There is obviously room, and indeed a need for, a detailed symposium devoted entirely to the topic of AI in the Family Justice system. It is a topic that we/I need to bring into much clearer focus than has hitherto been the case. It will be, for better or for worse, very much part of the future and we have a responsibility to ensure that it is 'for better' rather than 'for worse'. To that end, I am appointing one of the judges of the Family Division to be our national lead judge for AI – Mr Justice McKendrick. His role will dovetail into the work that is already underway across the judiciary to investigate how AI may be harnessed so as to assist in the judicial task, but there is also a need for there to be a bespoke understanding of the potential impact, both positive and negative, on Family justice in particular. The ability of AI to summarise, highlight and render digestible vast quantities of data in a second or two will be of undoubted benefit in Family cases. As will the ability to anonymise judgments and other documents for publication. But the potential for devious litigants to use AI to promote a false case or otherwise produce evidence which seems wholly credible but is in reality corrupt is also plain to see.

A final thought on AI is that we, I suspect in common with 99% of all people and organisations, are already playing catch-up with AI. And this is just where we happen to be in April 2025. The speed of development is astonishing and I am sure that unless we put a good deal of effort in now to catch up in our understanding and engagement with AI, our ability to do so will be far out of reach in a year or so's time.

I hope that this whistle-stop tour of where we have come from and where we are going has touched upon at least some of the pressing topics that need to be faced in the coming years. An address of this nature involves looking at the future of family justice. In all the time that I have been a Family lawyer and judge, it is true to say that Family law has not stood still long enough to have its photograph taken. It has always been changing and developing, and so it should, building on the solid bedrock established, in particular, by the Children Act 1989. But, justice, Family justice, is not delivered by an Act of Parliament, a regulation or even an authoritative decision. It is delivered on the ground by the people who work in the system, applying wisdom and insight in a

professional setting. And so, for all my words about this initiative or that initiative, the reality is that the 'Future of Family Justice' is YOU! And, knowing many of you as I do, I am confident that it is in very safe hands.

Sir Andrew McFarlane
President of the Family Division
16th May 2025