

JUSTICE COMMITTEE

REFORM OF THE FAMILY COURT

on

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Witness:

Sir Andrew McFarlane, President of the Family Division,
Judiciary of England and Wales

Chair:

Andy Slaughter MP

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CHAIR: Apologies, well double apologies, apologies for starting late and apologies for having an interruption.

SIR ANDREW MCFARLANE: I was enjoying it all in the back row.

CHAIR: Well it is kind of you to have been here to observe the first panel as well. We know who you are, everyone knows who you are so if you are content with that we will move straight into [inaudible].

SIR ANDREW MCFARLANE: Yes, and I was here when you all introduced yourselves.

CHAIR: Yes. Unless there is anything you wanted to say in introduction, but if not we will go into questions.

SIR ANDREW MCFARLANE: No.

CHAIR: Thank you very much. We are starting with Sarah Russell.

SARAH RUSSELL MP: Thank you. So there has obviously been discussion in the room about the impact of recent reforms to the family courts, and the impact of delays in both public and private law cases. What are your reflections on the various initiatives and reforms implemented to address delay in family courts?

SIR ANDREW MCFARLANE: Well that is a big question. We have come a long way. The delays were at a high level for public law going back to, and you all quite correctly quoted that we have never got to the 26 weeks but we got very close to it in about – it came in in 2014 in about 2015-16 we got close to it, which was astonishing because I was one of the five people on the Norgrove Committee, I was the only lawyer, and we looked at the delay there and it was 61 weeks, the average, when Norgrove met and we put 26 weeks in our recommendation thinking that by a statutory instrument over a course of five or six years it might be ratcheted down to 50, 40, 26 but government quite understandably said, “Oh no we will have that,” and they took the 26 weeks and implemented it. We invented a structure, the Public Law Outline, to cut the number of hearings and to get to that and we got to 28, 27 weeks national average in about 2015. But then suddenly the volume of new applications rose by about 25 percent in 2017-18, and my predecessor, Sir James Mumby called it the care crisis and he said we do not know why that has happened we do not know what to do about it, because we were we were running at capacity to do what we were doing. I will not go into why but it was basically austerity, the resources for social workers to do anything else but come to court have been reduced and that is where we were. Then COVID hit us and the backlog went up to about 13,000 cases, and the time taken in cases went up to about 46, 47 weeks. So since 2022 or so we have been trying to pull the thing back, and the direction of travel is very much in the right direction down to nationally I think it is 34 weeks now. Many areas are at or near 26 weeks it is London and the Southeast which is at a much higher figure.

So what are the causes what are we doing about it? I think after COVID I understood from everywhere I went that people have just lost any connection with 26 weeks, they were just doing the cases and delay had become normalised, and so I felt we needed a wake-up moment and so in January 2023 I relaunched the PLO and said, “Look everybody we know this works, it is untenable,” because the delay was getting worse and worse and the longer you leave a family case about children more stuff happens, and the case comes back to court and they say, “Oh no since the last hearing that has happened you have got to assess this.” So I relaunched the PLO and I think everybody got that message and that is what has been happening, and I relaunched the relaunch last autumn just to make sure the message has gone back.

So that is where we are, and we have got very few levers but what we are doing is trying to make every hearing count and keep the hearings short.

Similarly with private law, the volume went up after legal aid was largely removed because litigants in person were not meeting solicitors who were saying, come on you do not want to go to court about that, and I think the perception in the public may have been that the lawyers were generating the work but I think the statistics show it was the other way around. Again, in COVID obviously a lot of private law cases were generated by the circumstances of COVID, and that is harder to bring back down, partly because we cannot engage with the people who come to court for a private law application until they have issued their application. We can talk to local authorities in public law cases try and change their behaviour, and we are reliant on measures from government in the end to provide support, information, education, mediation for separating parents so that they do not think they need to come to court to get the volume down and that is work in progress.

SARAH RUSSELL MP: There are so many things that could be unpacked there and I do worry sometimes that we talk about this in quite sort of dry terms, but actually we are talking about highly vulnerable children. Particularly in relation to the ongoing delays in London and the Southeast. What is the cause of that?

SIR ANDREW MCFARLANE: There is no one cause. We are under resourced in the court in London and the Southeast, particularly with judges at the district judge level in the Southeast doughnut around London. That is not so much a problem in London, we are partly in London the number of court rooms, and so there is a limited resource and that is obviously very vulnerable. If the volume goes up we have got the same number of people, the same number of Cafcass officers and social workers to deal with it. But I think also, and I have spoken publicly about this, I think in London a culture had developed of allowing cases to drift, and in particular also moving away from having the same judge at every hearing, which is hard to do but it pays dividends if you do have continuity of the judge. So in November last year we launched a bespoke strategy for London, imaginatively called the London Strategy, and the aim of that was to deliver the rather unpalatable message to the professionals there saying, "Look everybody what you are doing is out of kilter with the way things are done elsewhere," and it is. People have listened to that and the judges I think particularly welcomed the fact that someone had said that, and the focus is now to drive things down, and the figures for London are beginning to move in the right direction. But it is regrettable that it was only during the course of last year that that penny dropped that London was, that it was partly a behavioural thing, a cultural thing rather than simply the volume of work. But that is where we are with that.

SARAH RUSSELL MP: What is the vacancy rate for judges doing this sort of work in London and generally?

SIR ANDREW MCFARLANE: London, I do not think it is such a problem in London, in the Southeast... I am happy to give you the actual data but I think we are about 20 percent down on the number of district judges, and whenever there is a competition, because that is what it is called, to recruit more district judges there is also a competition to recruit more circuit judges and the proportion of the new circuit judges are district judges, and so you are putting people into one bucket while the bucket is being emptied at the same time, so it is playing catch-up. So we rely a lot on fee paid judges, and they of course can decide whether or not to take up the invitation to sit.

SARAH RUSSELL MP: You talked about the relaunch of the Public Law Outline, and including the case management outline to encourage parties to meet the 26-week deadline and how has that been working in practice outside of London? Or was it just less necessary there [inaudible]?

SIR ANDREW MCFARLANE: I think it is working. As I say that the figures are showing it is all coming down. At the moment, in the last three months, we have observed that the volume of fresh

applications – this is for care orders – has gone up about 10/15 percent across the country, and again we do not know why that is. Speaking to those in local authorities, and this is anecdotal, I think that they would report that the volume of referrals coming in the front door, from schools, from police, from members of the community, has gone up at the moment, and we get a proportion of those through on into care proceedings. But I do not know.

Apart from that it is working well, and there is a tight group of key judges at the 42 centres around the country, including obviously London and the Southeast, that they are Designated Family Judges and I am in touch very regularly with them, they are in touch with each other, we share all these messages together. If someone has developed particularly good practice in an area, Coventry as a recent example, that person from Coventry shares all that. So I think we have all become more connected and we are looking to work together and learn from each other. I think that is partly one of the positives of COVID, I think people do meet up more regularly now in our non-system and that is very helpful.

SARAH RUSSELL MP: Are the checklists the right method to improve timeliness do you think?

SIR ANDREW MCFARLANE: These are the checklists that were piloted by the DFE. I think that they have stopped piloting, I think the view was therefore they did not particularly add value. My view was that they were fairly straightforward checklists being given to professionals who really ought to be thinking these things through anyway, so I was not surprised that it did not really change behaviour very significantly, so we resort to just good practice more generally without adding another piece of paper to be put through the system.

CHAIR: Tony?

TONY VAUGHAN KC: Would it be possible, Sir Andrew, just to go back to your point about the lack of district judges because I was quite struck by what you said about there being 20 percent down on district judges in the Southeast. You refer to the simultaneous recruitment of circuit judges and district judges, but I just wondered if there is any other aspect or any other relevant kind of dynamic that is going on that is relevant to that lack of ability to attract full time district judges.

SIR ANDREW MCFARLANE: I think it is an interesting question, and it is one which the Lady Chief Justice is probably better able to answer, and it is something that we at the level of the Chief Justice and I as a Head of Division we have been looking at over the years. It is a complicated set of consequences, partly to do with some alterations to the judicial pension scheme, partly to do with payment of expenses, partly to do with the fact that quite a few fee paid judges now have a portfolio of fee paid appointments, and so they will not necessarily just be a deputy district judge, they may be at the mental health tribunal, they may be part of the wider tribunal process. So they may have nearly a full-time occupation being a part time judge, and so the question what is it that might attract them to become a full-time judge is one needs to be to be asked. It is a hard job, being the district judge is at the pinch point of the whole system and so I am very grateful to those who want to be district judges, but I think it is not necessarily the career choice that everyone would make whereas it might well have been 20 years ago.

CHAIR: Neil?

DR NEIL SHASTRI-HURST MP: I just want to pick up on that point again if I may, Sir Andrew. Does the fact that there are insufficient district judges available to do these cases influence how the gatekeeping mechanism is done across different regions and how cases are allocated, whether that is to magistrates whether it is to district judges whether it is to circuit judges, because of that pinch point that you have described?

SIR ANDREW MCFARLANE: I think that when I say there... the absence of salaried judges in any particular place is made up by having the fee paid judges come in, so inevitably they are different, each week it is a different person who is occupying that chair. I do not think it alters the gatekeeping because that tends to be done by just one or two individuals who always do it at the particular court centres, and the legal advisors who are salaried also do it. It may alter the allocation, it goes back to what I said earlier about putting the case into the list of Judge Bloggs and so it is always them with Judge Bloggs because there may not be a full time judge there, and so that alters the case's life after the gatekeeping but not necessarily the choices that are made at gatekeeping, if that makes sense.

DR NEIL SHASTRI-HURST MP: It does I just wondered whether it would influence, because of what you know your resources are further down the line, where you allocate those cases.

SIR ANDREW MCFARLANE: I do not know that because I am sitting at my end of the tube, I do not get to see that but it would not surprise me.

DR NEIL SHASTRI-HURST MP: Have there been any studies that have looked at that about decision making of those individuals who are doing that?

SIR ANDREW MCFARLANE: I haven't seen any.

CHAIR: I'll bring Anna in in a moment but, Pam, did you have a short point?

PAM COX MP: While we are talking about the relaunch of the Public Law Outline I remember the first one, is there a space in any further iteration of the Public Law Outline to include a requirement for the offer of post proceedings engagement to be made to parents, just the offer of post proceedings engagement, or is that not the place to do it?

SIR ANDREW MCFARLANE: They are different... I think there were not any answers that you were given by the three previous witnesses that I disagreed with, I am entirely... was pleased by the questions you asked there. But the Public Law Outline is the in-house case management system for the cases before they finish, so they are not to do with that.

Something that was not mentioned and you suspect will know it, is there are initiatives like Pause, which is funded by some local authorities which engage with a mother, as it will be, after the end of the proceedings and we will say to her, "Look if you pause having more children, if you agree to go on to some slow release contraception we will work with you to address the problems that you might have," drug alcohol whatever they may be, relationship domestic abuse. The success rate of Pause is really very high, the women who have been able to turn their lives around during the Pause go on to have children subsequently, and may even be reunited with the children that have gone into care. So I am a great supporter of that sort of initiative. FDAC is the same idea live during the currency of the court case, but it needs resources from local authorities.

CHAIR: Anna?

ANNA DIXON MP: Thank you, Sir Andrew. You mentioned the Designated Family Judge approach, I understood it to be a pilot or were you suggesting that that is now sort of usual business?

SIR ANDREW MCFARLANE: I may have confused. Every court has a Designated Family Judge who is the judge in charge of the family business in that patch, and that has always been the case, so maybe something I said.

ANNA DIXON MP: Okay.

SIR ANDREW MCFARLANE: What I said was that they are even more in touch with each other now and they share good practice.

ANNA DIXON MP: Yes, so as I understand it there has been a pilot where these Designated Family Judges are operating with delivery partners to do this deep dive analysis into the delays.

SIR ANDREW MCFARLANE: That was the Trailblazer.

ANNA DIXON MP: Yes.

SIR ANDREW MCFARLANE: I think there are so many initiatives, but I think that is the one.

ANNA DIXON MP: Pathfinders, Trailblazers, yes, I am on Trailblazers, and obviously you will have heard from our previous witnesses they talked about a lot of different reasons for delay, you yourself have touched on some of them, so could you just reflect on what has been successful about that pilot both in terms of identifying delays but addressing them? I will leave it there.

SIR ANDREW MCFARLANE: I think it is, if you are interested it is worth looking at the Trailblazer report. It was, I think, five areas they were particularly involved with, and they were then also engaged with about another 10 or 15. There were different problems in each of the different areas, or they were the same problems but they were more acute in some areas so there is no one size fits all. I am sure that the courts that they visited benefited from having the problems unpicked and identified and then addressed separately, because if you are running any organisation if you are in the middle of just doing the day job you do not have the headspace to do that, and I think it was very useful that that happened. In the end the messages from it were pretty simple, which is useful, and it was keep the cases short, make sure things come in... Delay is the enemy of any litigation but for children it is appalling because it is another period of time where they are in limbo, and these issues are not resolved. As I have said, often the problems become more acute and so addressing the causes of delay and shining a light on those... I think that what would be useful is to go back to the areas now, a year later, to see whether lessons were sustained and the pennies that dropped remain dropped, but it was a good thing to do. Again, the Trailblazers have shared that report with all the other DFJs and they have spoken at the conference I have with the DFJs, so bit by bit this learning is coming through.

ANNA DIXON: We heard from the witnesses things like needing to get repeat expert input, or that some of the cases were being delayed. You have mentioned legal aid, more people representing themselves effectively, so I am guessing not all of those are within the control of a Designated Family Judge. So what are the other sticking points that need to be addressed outwith that the Trailblazers in a sense identified but could not deal with?

SIR ANDREW MCFARLANE: I would have to go back to the Trailblazer report to see what...

ANNA DIXON: All right.

SIR ANDREW MCFARLANE: That is a question about what they did not deal with and where we are now.

ANNA DIXON: Do you have any insights yourself into the whole issue?

SIR ANDREW MCFARLANE: They are old problems. In public law cases the local authority issue their proceedings because they have got a view of the case. They may or may not have undertaken thorough assessments of why they have got that view, and the case starts, and certainly prior to two or three years ago it was the norm that the court would say, "Right, this case

has started, we will need a psychologist, we will need a hair strand test, we will need," whatever else in terms of new experts coming in for the first time, and there is a... because the volume of cases is such, the number of experts is limited and they can dictate the timetable to a degree, so immediately you enter delay.

So three or four years ago a group called the President's Public Law Working Group, another imaginative title, identified that it would be a game changer if all local authorities in cases which were not urgent, so these are children that are on their books that they are worried about but they do not have to come to court today, conducted thorough assessments, (a) so that they understood more clearly why they were worried and whether they were still worried, (b) to look at other options other than coming to court, so that they only came to court when they really needed to, and we did see a drop off in the number of applications after this, but also in terms of the assessments that the court application would be match fit for the court process. The other part of that balance was that I was very plain with the judges that they should not then automatically order fresh experts or suck air through their judicial teeth and say, "Why did you not you come six weeks ago or two months ago?" because they could. But they have spent that time in reconnaissance and so that has been a real difference, both in terms of lowering the volume and shortening the hearings, because unless there is a really good reason, the parents and Cafcass cannot expect to have a fresh expert brought in.

ANNA DIXON: Does continuity of judge play any role in this?

SIR ANDREW MCFARLANE: It does, and it is the golden model. It is more easily achieved in the smaller court centres where often it is only one or two judges, but in the bigger centres it is very difficult to achieve, but that is if possible.

ANNA DIXON: Do we have data on how many cases actually do get continuity?

SIR ANDREW MCFARLANE: I am sure we could, but I do not see that, it does not come across very much.

ANNA DIXON: All right, thank you.

CHAIR: [Inaudible].

SARAH RUSSELL MP: In terms of that, in what percentage do you think of judges working on these public law and private law children cases are currently part time?

SIR ANDREW MCFARLANE: I think the public law cases are fewer, I think the public law cases tend to be done by the full time judges. I would have thought probably 25 percent – this is a finger in the wind figure – but about 25 percent part time. But most will be done by the full time judges, partly because the cases are allocated on the system, the digital system that we do have for that to a particular judge. Also the model works, the case comes in and there is a hearing in the first two weeks to set it up, and then the only other hearing that should take place is an issue resolution hearing late on in the 26 weeks where the judge eyeballs everyone and says, "Well do we really need to decide this issue?" or, "What is the position on this?" "Why are you...?" Then the final hearing should be relatively shortly after that, and all the experiences, if you have got the same judge who says, "Right, well if we are having a hearing we will have it in six weeks' time and I am going to be the judge," that concentrates minds much more clearly at the issue resolution stage.

SARAH RUSSELL MP: You think private law [inaudible]?

SIR ANDREW MCFARLANE: So it is private law where I am afraid we see more of the negative lack of judicial continuity, and that is also partly human... if you are litigants in person and you are getting a different judge every time, then you try and tell your story again and that is human nature, is it not?

CHAIR: Tony?

TONY VAUGHAN KC MP: Thank you, Chair. So Andrew, I want to talk about early intervention, just picking up from where we left off on private family law, you have said that change in that area is your principal priority, so I just wanted to ask what do you think are the specific changes that are needed, and it may be we have already dealt with it, but specifically in relation to that, what are the changes that are needed and how are we getting on in implementing those changes?

SIR ANDREW MCFARLANE: This is well-trodden ground and if you are interested in this, it is all set out in a report called What About Me?, which was published by a group under the President's Private Law Working Group called the Family Solutions Group in, I think, 2022. What About Me? sets out all of the interventions that ought to be in place to support couples when they split up and they need to have some help resolving issues about their children. I was very pleased that when Dominic Raab was Lord Chancellor, he accepted that this was well-trodden ground and that the Ministry of Justice had never actually engaged with it, it had always been something... He consulted on a whole range of about 10 or 12 elements of this catalogue of interventions and the previous government published its proposals or response to that in February 2024, and it is called Supporting Earlier Resolution of Private Family Law Arrangements, and there you will see a list of things, improved information, a neutral, authoritative, detailed web presence on GOV.UK, support and guidance, partly going into family hubs, which MPs will know are in a lot of localities, provision of the SPIPs, the Separating Parent Information Programmes that were mentioned earlier. Those are not available at the moment unless you come to court, and the proposal is that those be funded. They are like a speed awareness course for parents, and I do not think I am belittling it, it is exactly that. Mediation, mediation vouchers, and also, they were suggesting early legal advice, which those of us who are a little older than some of the others would call green form legal advice. So it would be, in the modern world, a parent having two hours paid for legal advice online with a solicitor probably somewhere else in the country.

So those were the sorts of things, but they need money. The new government, the previous Lord Chancellor, was in favour of what had been happening and some of them are progressing. In particular, the web presence is being funded because it is likely to be of great benefit, and it may well be used in other areas of the law. The Mediation Voucher Scheme carries on, and there is interest in doing more, but that is the list, that is what is needed. The feel that those of us in the court have is that there are a lot of cases that need to come. The domestic abuse cases need to come, but a lot of people come because it is the first port of call, and what was striking to me was an account given. This Family Solutions Group went, for a pilot, to Birmingham to spend two months, I think every Monday, providing this sort of intervention and advice in a local family hub, or I think two family hubs in Birmingham, and they were astonished that the professionals working in the hub had no awareness of most of the things I have mentioned. No awareness of mediation or the Voucher Scheme or a SPIP or MIAM, and so I think that there is a feel out there that if you have got a problem with your ex, you go to court, and that is a major impediment to us being able to move forward because going to court does not help. There is a book called (Almost) Anything But Family Court, and I, as Head of the Family Court, wrote the foreword to that.

TONY VAUGHAN KC MP: Thank you. Just picking up on the mediation information and assessment meetings, which I think were one of the outputs of that review in April 2024, that was supposed to radically tighten up, well, there have been radical tightening ups of the process, what effect would you say that the tightening up has had, if any?

SIR ANDREW MCFARLANE: Well, I am very disappointed in that, because it needed tightening up. This is the MIAM, there is a requirement before you, if you issue an application to come to the court, unless you are exempt, domestic abuse, for example, you have got to go and meet a mediator to talk about mediation for an hour and the statistics show that if you do, a large proportion go on to attempt mediation and a fair proportion end up resolving themselves. But it had fallen into really disuse, and so we tightened up the exceptions and we made it a mandatory requirement that the judge had to send them back if they were not exempt, but the data, such as it is, shows that I think there is... the increase, it has been in now for 15, 16 months, has it not? The increase is about one percent in the number of MIAMs being taken up. So I need to revisit.

TONY VAUGHAN KC MP: Are we collecting the right data on this? I mean, do we know what proportion of parents who go to MIAM actually start mediation?

SIR ANDREW MCFARLANE: I should have written that down to tell you. I think it is about 60 percent, but we can give you the precise figure, but it is a good figure, it is impressive, and I think many in the public do not quite know what mediation is, "I do not want to get back together," and that is not what it is about, and I think that is, not making fun of it, I think that is a perception, and I think when they sit down with a mediator and understand what the process is and what a mediator looks like and the sort of things they say, then I think it is quite attractive. It should be, to them.

TONY VAUGHAN KC MP: What reforms are most important to get us to the point where parents do see court as a sort of real last resort rather than the first resort?

SIR ANDREW MCFARLANE: I think it is banging that message home. It is the catalogue of things that the government policy... this MIAM tightening-up is part of a much wider jigsaw. It is the only bit we have done, and it sits alone at the moment. It is funded, and the take-up on the Mediation Voucher Scheme is impressive, and it is good in these tight financial circumstances that the Ministry of Justice continues to fund the Voucher Scheme, but the whole apron around the court needs to be populated with these other resources to just allow people to understand what normal, what people do when they split up, what normal looks like and just feel reassured that they are doing something that is right for their child. These are frightening, bewildering times when you split up and so that is a big change, but until we start trying to do it, it won't happen.

TONY VAUGHAN KC MP: Right. Lastly, for me, just on the early intervention scheme, but in relation to public law, I mean, we have been talking about the Public Law Outline, but I mean, what will the Family Group Decision Making meeting, which is in the Children, Schools and Wellbeing Bill, add to that PLO process, pre-proceedings process, do you think?

SIR ANDREW MCFARLANE: Well, it is a step that is undertaken by quite a few local authorities now and the aim of the Bill is, I think, to make it uniform. There are 152 local authorities to make it uniform. I think, I mean, it is difficult because I am a judge and I should not be commenting on the content of a Bill. I have seen the Family Rights Group's response to the Bill, which is that, yes, this is a good start, but there is not much detail in it and it talks about a meeting, whereas they see the group, the Family Group Conference as being a process that may take time to set up and then move forward. I think a lot will turn on, not so much the wording of the clause that goes into the Act, if it is passed, but in the guidance and regulations that underpin it.

TONY VAUGHAN KC MP: As a concept?

SIR ANDREW MCFARLANE: As a concept, it is absolutely what ought to be happening, and I think that is what all three of the other witnesses... it is very welcome, because often, in a family, even if something really awful has happened in the care of the parents, there will be safe members of the family who can come forward, and they need permission to come forward and

encouragement to come forward at an early, early stage. And that can change the course for the child from going through care, then on into adoption, to having a life where they are living in their family, with the knowledge of their parents, even though they cannot, it is thought, safely live with them.

TONY VAUGHAN KC MP: Thank you, Sir Andrew.

CHAIR: Warinder Juss?

WARINDER JUSS MP: Thank you, Sir Andrew. I am going to ask you about the Pathfinder courts, and you have said previously that you think that they are the future for private law cases. So what feedback have you had from parents, children and victims of domestic abuse about their experience of Pathfinder courts, and why do you think they are the future, and do you think that that is what we are heading towards for the future?

SIR ANDREW MCFARLANE: The feedback at the moment is limited. We have only been doing the courts for two or three years in two centres and then much more recently in other places. In Wales, where they have them in all family courts now, the feedback is that the majority of those who have been contacted were happy with the outcome and they felt they had been listened to, and the children were pleased that their voices have been heard at the beginning of the process, which is obviously a key element of Pathfinder. Then in England we have got – I will not read them out – a number of quotes from children, but the phrases I have seen is that the parents and domestic abuse survivors feel better informed, they feel better protected, and they feel they have been listened to. A key element of Pathfinder – I am talking as if you all know what Pathfinder is, but there are two key elements to it, perhaps if I spend a minute just saying what it is. The current model, a couple come to court, one of them may be represented, often the other one is not, and the court does not know much about it. So it says, “What is this case about, Mr or Mrs,” so the judge is sitting back reacting to the adults and it is led by the litigants and it is only, if it carries on being contested, eight or nine months or more down the track that a report from Cafcass comes in and someone has spoken to the child, to the school, to the doctor, whatever, and the court has got some independent knowledge about what is going on, but by then things have become entrenched.

Pathfinder does two separate things. Pathfinder, firstly, before the very first hearing, Cafcass do all that, so in the first hearing, instead of reacting to the couple, the court has got the full clip, and in my mind’s eye, the judge is leaning forward saying, “Well look you two, look what is written down here in this report called a Child Impact Report. Is this a description of what is going on?” “Yes, it is,” “Well, look at the impact on your child of where you two are at, at the moment, what are we going to do about this?” and immediately it is an informed process and the judge has got a pretty clear view about what is going to be the better outcome for the child. Secondly, and importantly, the MOJ put money into the Pathfinder areas to fund domestic abuse professionals to make sure that there are those resources and those individuals, professionals, come to court much more often with Pathfinder to support those who are the victims of domestic abuse, and, as was said earlier, there is a domestic abuse appraisal as part of this information that judges got and so domestic abuse is far more in focus with professional input at that first hearing in a way that just is not the case now.

WARINDER JUSS MP: Are these cases getting resolved or are they coming back?

SIR ANDREW MCFARLANE: Yes. So, they tend to, at that first hearing, some of the cases, it is so obvious what the outcome will be that at the gatekeeping stage when the court has a look at the report, it will make the order and say, “You can come back if you don’t agree with this, but that is the order.” Other cases resolve at the first hearing. If there is a second hearing, it tends to happen two or three weeks later, and the hearing is not about fact-finding, it is about what we are going to do, and so the only witness might be the Cafcass officer or the parents talking briefly about what

they are saying. So it will be a short hearing and the case is resolved at that stage, and there is a lower level of people coming back to court to dispute matters.

WARINDER JUSS MP: So back in June, the Public Accounts Committee heard that it was a bit of a challenge to roll out Pathfinder courts in London because of high caseloads. Is that still the position or is the situation getting better?

SIR ANDREW MCFARLANE: In order to do what I have just described, we will have a hearing in four weeks' time, you have got to have the backlog pretty well cleared, and what we have done in the bigger centres such as Birmingham and Leeds and Cardiff where Pathfinder was rolled out, nine months before it started we had a concerted effort to clear the backlog, and we have learned a lot by that. The courts that it is going to now, which are Staffordshire, the Black Country and Worcestershire, Hereford and Worcester, and then Hampshire, because they are close to current Pathfinder courts, have got low backlog. London have started to – their backlog is enormous – get their backlog down. MOJ has put extra money in to have extra courts sitting, and again, the figures show the backlog is coming down. We have learned from Birmingham and Cardiff and Leeds that if you have a concerted push and get the cases in, often the people are very relieved to be brought back into court. Quite often life has moved on and they have rearranged themselves anyway, so it is less of a challenge actually when you start attacking the backlog than people have thought it might be.

So what the plan is, dependent upon the MOJ authorising Pathfinder to go anywhere else apart from the 10 courts it is going to be at by the end of this financial year, will be to address the backlog in London and the Southeast particularly, but everywhere else for Pathfinder to start.

WARINDER JUSS MP: Do you think it is something that we are likely to do?

SIR ANDREW MCFARLANE: It is doable, but because it is where it is, it is a big challenge, but already it is moving in the right direction. If my eyesight was good, I could give you the figures for London, but I am happy to send them in.

WARINDER JUSS MP: Can I just move on to the Family Drug and Alcohol Court, because I think previously you said to the committee that court is a bit of a postcode lottery. What is the reason for that and what are the reasons for that lack of provision?

SIR ANDREW MCFARLANE: Again, members of the committee will probably know what the court does. But these are public law proceedings and if the presenting issue is, it will often be a mother but may well be a father, with drugs and or alcohol and there has often been previous children removed, they will say, "Look are you prepared to be assessed and, if it is appropriate, engage with this group of professionals that are available to address your addiction problem while we get the case carrying on, because it will take 26 weeks?" "Yes," and they do and then they come back and report to the judge, in a bit of the way that happens in the criminal court in a different context with drugs, every two weeks just to have a review, and it has a high success rate of supporting these individuals to become dry and become clean. So that is all good.

The problem is who pays for this group of psychiatrists, psychologists, specialists, addiction social workers because they are not part of the court system? Answer, probably the local authority. That is the normal source. Police commissioners pay in some areas. Some charities pay in some areas, but it is haphazard, the funding, and it is not cheap. All the research of FDAC shows that for every pound spent, it reaps two or three pounds benefit, and you can look at the research, but it is getting the money up front in the course of the financial year. So what happens is that local authorities who have geared themselves up to do this can run the FDAC, and some courts have been running for years. But quite often, it has happened in Newcastle in the last nine months, they say, "I am sorry, we cannot fund it anymore," and they go, and it was almost the same week that we opened one in

Liverpool, and we have lost most of the local authorities from the Black Country at the moment. So it is a postcode lottery because it depends upon the local authority in each postcode to be able to fund it.

So I have got to tread carefully, Chair, because I am a judge, but it does occur to me that the social benefit of using the court as a moment in someone's life for intervention, with the judge as a parental figure, does achieve massive change for these individuals. Their lives turn around, but it is something that across government might be looked at. It is not actually an MOJ problem. The MOJ do their bit by providing the courtroom and the judge to be the facility, but the Home Office must have interest in this, Department of Health, Department of Education, but I am a judge, I could not possibly even have just said what I have just said.

The reason that I am passionate about this is that although it says on the tin "drugs and alcohol", I understand that every case, if it is not every case it is nearly every case, an underlying feature is domestic abuse. These individuals are serially victims of horrid, sustained domestic abuse, and turning to drugs and alcohol is a coping mechanism, and the professionals working in FDAC say we often have to address the domestic abuse first before we can allow the individual to have confidence to move on. Well, if that is right, if it is a facility that will address domestic abuse, then all the more reason for it to be taken seriously in the campaign that government rightly has on focusing on violence against women and girls.

So, I hope I have not overstepped the mark. I may have to retire.

[Laughter]

WARINDER JUSS MP: Well, perhaps I should not ask the next question then. But, I mean, I think you obviously are of the view that we should have a Family Drug and Alcohol Court in every court area.

SIR ANDREW MCFARLANE: Yes, I have been on record for a long time saying that.

WARINDER JUSS MP: But it is just getting that funding sorted.

SIR ANDREW MCFARLANE: Yes.

WARINDER JUSS MP: So somebody else needs to provide that funding.

SIR ANDREW MCFARLANE: Yes, and it is always money, is it not? And I have the luxury of not having the decision to make about money. I have not met anybody who is against FDACs. It is just a matter of financial priorities, is it not?

CHAIR: Thank you. You alluded to retirement, and it made us aware that this could be the last time you appear in front of the committee. What we had to do in the last part of the session was to reflect on when you were here before and ask you about some of the changes that have taken place. I am conscious the vote is going to come at exactly the wrong time.

SIR ANDREW MCFARLANE: Are you going to have a vote now?

CHAIR: Five minutes.

SIR ANDREW MCFARLANE: Yes.

CHAIR: So I can tell you what we are going to ask. I think we would then have to disappear for 10 or 15 minutes. If you are not able to stay for that, you could always reply to us in writing, but if you are able to, then...

SIR ANDREW MCFARLANE: I am able to stay if there are questions, but whether you will want to come back to hear the answer or not...

[Laughter]

CHAIR: We will very briefly cover the topics of domestic abuse, AI transparency and liberty orders. So nothing too complicated. Sarah, I don't know whether you want to lead on any of that?

SARAH RUSSELL MP: I think the most important thing, really, is that when you gave evidence before this committee in April 2024, you suggested that, to avoid the problem of special measures not being in place when victims of domestic abuse attend court, that they could be in place as default. Do you know are steps being taken to implement this?

SIR ANDREW MCFARLANE: I think a lot of courts now, the experience is that special measures are used so often that the kit is in the courtroom and it is quite easy to take out. I do not know whether... I mean it certainly is not the case that it is the default in every court that it is there, but when I visit courts, it is... those of you, the rest of you who visit courts, the screens are always there. It is all pretty rudimentary, but I think it is part of ordinary business now, and I think that is an element that we have moved on. But I think we have not got the resources that I could dictate, if I could dictate, that it should be all the time in every court.

SARAH RUSSELL MP: Thank you. In terms of final sort of reflections, if you do not mind me asking, I wondered two things; one is, I am sure you are irreplaceable, but do you know how matters are going in terms of finding a replacement? And secondly, do you have any reflections you would like to share with us, on your term as President of the Family Division, or other issues that you would like to talk to us about?

SIR ANDREW MCFARLANE: I just see the Chair's eye on the clock.

SARAH RUSSELL MP: We have not heard a bell. You are good.

SIR ANDREW MCFARLANE: There will need to be a Judicial Appointments Commission competition to find my successor, and that will start, and I have given six months' notice on the understanding that the successor will be identified before the end of that period. So I do not know any more about that, and it is not a matter for me, it is a matter for others.

Looking back, it has just been a time of enormous change. We have discussed quite a bit of it, but it goes back to a question you asked. In the course of that time, we have rolled out the digital programmes for almost the entirety of family justice, so that is private law, divorce, which is working very well, the financial remedy side of family cases, and the remaining bit, nearly ready to go, is the private law, but it is not quite ready to go yet. Well, that has been, if you were a judge in the courts at that time, or in the court offices at that time, a very challenging process. Despite the best endeavours of the people behind them, none of these processes worked straight out of the box, and it has taken much – I think when I became President seven years ago, we thought we would finish that process in three years, and we still have not. So that has been a characteristic of the whole time I have been President, but we have effectively got it done now, and that is a major development.

Then what I have talked about has been a prominent part of my time, the one thing I have not mentioned is transparency, and you will know that we have opened up the court, and it is now part of business as usual that journalists can come in and can report what goes on without naming anybody. But being transparent is much more than simply letting a journalist in, it is an attitude of mind, being open. So I have been prepared to go on the radio, give interviews to journalists in a way that judges probably have not before, because I think the public have a right to understand what we are doing on their behalf. I think being transparent will carry on and will carry on being something that will need to be looked at. I hope all of you visit your local family courts. I have encouraged all the local judges to encourage their individual MPs to come in. I am sure MPs visit the local schools, local hospitals, why not the local family court? Journalists to come into the local family court, not to report a story, which of course they can, but just to see what goes on, what makes it tick. We were called the Secret Family Justice System or the Secret Family Court, and I do not think that can be applied to us now. We do not want to be, and I think that change has been a big one in my time.

CHAIR: Thank you. I think I may make this the last question. You told our predecessor committee that you wanted some clarity looking long term as to what the court in the future would look like and what staff will be in the building, and I noticed that you recently appointed a national lead judge for AI. What does that role involve, and what role do you see for AI in the future of the family court?

SIR ANDREW MCFARLANE: Those are two separate things, equally important. What I was talking about on the last occasion is, I think, uppermost in the mind of family judges up and down the country. Once the computer programs are up and running, what will be the staff resource in the building, human beings, to support the judges? I am very pleased that work is now being done to look at what the court of the future will be in terms of that support. It is crucial that the judges are free as much as possible to do the judging rather than becoming quasi administrators in running the computer systems.

AI is fascinating and we are all of us only where we are now in October 2025 in our understanding of it and what it is capable of doing. I have appointed a judge to be in charge of AI, not because I want, by next Thursday, the family court to be doing everything on AI. What I was conscious of was the fact that this was all developing and we needed to be informed about it and understand what it can do for us and what to be aware of.

[Bell rings]

CHAIR: You have got a couple of minutes.

SIR ANDREW MCFARLANE: What to be aware of. I am keen on transcripts of court hearings and particular judgments being available much more than they are, and it is a burdensome thing, getting a transcript. It is an expensive thing, and judges have to read them and authorise them. I am sure AI can be very useful in producing far more efficiently a transcript, for example, and AI should be available to, again more efficiently, anonymise a judgment so it can be put out. But we need to be wary, there has already been cases where AI has been used by lawyers to produce documents which have, hopefully inadvertently, produced, I think it is called hallucinations, non-existent decisions. So it is something we need to be fully aware of. But you will need to ask the next President what it is all about in terms of where it lands.

CHAIR: Thank you very much indeed. We are not going to keep you any longer because we may have more than one vote.

SIR ANDREW MCFARLANE: I think we have covered the ground.

CHAIR: I think we have covered everything. If there is any clarification, we will write to you. I am going to close the session but before I do, can I just wish you well for the rest of your term in office and whatever you do after that.

SIR ANDREW MCFARLANE: Thank you very much.

CHAIR: And thank you for bearing with us.

SIR ANDREW MCFARLANE: I am sure you will not need to invite me back again but if there is anything you want in terms of fresh information then please, please ask. Thank you.

CHAIR: Thank you very much. That concludes this afternoon's business. Order, order.

[Ends]