

Supporting Families in Conflict: There is a better way.

An Address by Sir Andrew McFarlane

to the Jersey International Family Law Conference 2021

Introduction

Good afternoon and thank you for inviting me to address the Jersey International Family Law Conference. We chance upon each other, you and I, today, some 3 years into my term as President of the Family Division and, if I am to retire at age 70, about 3 years before my retirement. Reaching this notional half-way stage has caused me to pause and consider what my priorities are to be for the remainder of my time at the helm. Being “Head of Family Justice” is a very broad and busy role and, of course, I will continue to be fully involved in all aspects of the work as I have tried to be thus far; but, within that, what are my priorities – what do I want to achieve by the time that I hang up my wig and flashy robes in 3 years’ time?

I am not going to give you an exhaustive list. To do so would be to suggest that topics not on the list are not a priority, or that I am going to concentrate only on matters that are listed; when neither of those suggestions is the case.

Delivering the implementation of the long-running Digital Reform Programme for Civil, Family and Tribunals, which is now all under the national leadership of Mr Justice Stephen Cobb, is a given. As is continuing to press for and support the adoption by every single social worker, lawyer, magistrate and judge of the Public Law Working Groups recommendations which, since their roll-out in April of this year, has been a national requirement. In addition, I will maintain my aim of 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, in order that those working in the Family Court can benefit from co-operative and jointly developed ways of working with those who (as they themselves may do so) sit in other jurisdictions. These and other specific initiatives, together with the all embracing need to protect and enhance the well-being of everyone involved in the delivery of family justice, will always be on my ‘to do’ list and will not fall back during the time that remains. When I refer to ‘priority’, I am therefore looking at the two topics to which I intend to devote additional time, effort and resources in the remaining 3 years.

The first is ‘transparency’. Namely, the processes by which the Family Court may be made more open so that the wider public may gain a greater understanding of the work that is done in the courts on their behalf. The conclusions that I have reached following the ‘Transparency Review’ that has been undertaken during the past year or so will be published later this month.

The second, but in reality the primary, topic to which I intend to devote additional focus in the coming period is the resolution of Private Law disputes between parents with respect to the care arrangements made for their children post-separation.

Parental Dispute Resolution: The Need for a New Approach

How best to support the resolution of family conflict when the welfare of children is involved is a very old chestnut. It was very much in the minds of the architects of the Children Act 1989, over 30 years ago. It was the topic of the ground-breaking work undertaken by Sir Nicholas Wall and others under the umbrella of ‘Making Contact Work’. It was squarely in the focus of Sir David Norgrove and the Family Justice Review in 2011. It was the subject of a speech entitled ‘Making Parental Responsibility work’ that I gave in 2014, and it has been the clear target of the Private Law Working Group and the ‘CAP’ under the chairmanship of Mr Justice Stephen Cobb for more than 5 years.

Whilst each of the endeavours that I have described has sought to develop different strategies by which the court might engage with and manage various categories of parental dispute once an application for a court order has been made, such strategies cannot and have not connected with separating parents at much earlier stage, ‘upstream’ as it were, before they even contemplate issuing an application in the Family Court. Such pre-court involvement can only be achieved, almost by definition, by those outside the court system. The universal call by all those who have looked at this down the decades has therefore been for greater provision, which is co-ordinated and signposted, of information, guidance and support to parents outside of the court setting and, at an even higher level, for there to be a general public education programme so that, in time, common knowledge develops as to the way parents who separate may best conduct themselves for the benefit of their children and their own emotional well-being.

In my 2014 lecture ‘Making Parental Responsibility Work’¹, having set out the historical context and the development of, and then the move away from, the concept of ‘custody’ to that of ‘parental responsibility’ under the CA 1989, I heralded the changes introduced by the Children and Families Act 2014, following recommendations made by the Family Justice Review, which, in April 2014, removed the labels ‘Residence Order’ and ‘Contact Order’ from the statute book and replaced them with the all embracing term ‘Child Arrangements Order’. In my address I sought to explain the policy behind this change which was, as I said, ‘much more, so much more, than simply an altering of labels.’ The new order was aimed at simply setting out the nuts and bolt arrangements as between the parents for the care of their child, it was not intended to carry with it any additional attribution of enhanced, or diminished, parental status. Again I said: “Parental status comes with parental responsibility and, when it is shared, it is and will always be a status of equals with each parent required to respect the status of the other”.

As mediator and non-practicing solicitor, Helen Adam, has much more recently stated², separating parents should not be looking for a 50:50 or some other proportionate division, as between the two of them after separation. They all need to understand that the split is fixed at ‘100:100’ in terms of parental status and parental responsibility, subject to any order of the court.

In terms of public education with respect to the 2014 changes I said this:

“The message that this part of the legal landscape underwent a sea change on 22 April 2014 needs to become general common knowledge. Unless parents, and I would say all parents, grandparents, friends and other family members understand that the approach of the law and the courts to these issues has changed, and, more importantly, why they have changed, there is a real danger that the reforms will not improve the lot of children and their parents for the better and 22 April 2014 will, with the eye of history, simply be seen as the day upon which the labels were changed on the court door and the court orders.”

¹ http://alc.org.uk/uploads/2014_Memorial_Lecture_-_Making_parental_responsibility_work_26_June_2014.pdf

² *Language Matters: time to reframe our national vocabulary for family breakdown* (Helen Adam) [2021] Fam Law 1015.

Well, of course, as we all know 22 April 2014 came and went and, contrary to my hope that there might be an all-embracing change in the bedrock understanding of the general public on these issues, in reality little has changed. Indeed, even within the supposedly neutral ‘Child Arrangements Order’, there is now a two-tier level of status as between those who have a ‘lived with’ order and those who do not.

It remains the case that, more than 30 years after the term was removed from the statute book, the media, some politicians and the public in general still speak in terms of ‘custody’ and ‘access’ and, I fear, that the concept of a 100:100 split would be source of puzzlement rather than accepted understanding for many.

There are, as this audience well knows, two broad categories of private law case that come before the Family Court. Those which raise safeguarding issues, and where protection is sought by way of court order for a parent and/or children, and those which do not. I will turn in due course and consider the former group, where domestic abuse is a feature. My current remarks are confined to the latter category of case. In this respect in a keynote address to the Resolution Annual Conference in 2019³, I said:

“Cases of straight forward relationship disfunction, not involving abuse or a need for protection, should not need to come before a magistrate or judge for resolution. Indeed, because, for this group of cases, the issues concern matters of emotion and psychology, a court is most unlikely to be the best place to achieve any lasting resolution. The court, with its clunky legalistic approach will undoubtedly, in the end, produce a result which may then have to be imposed upon the parents, but, I would suggest, for this substantial group of cases, the court process is not one that either adds value to the welfare of the child or is in any way beneficial for the parents. In some cases, it may simply provide a pitch and a referee for them to play out further rounds in their adult contest.”

I continued:

“To my mind, **there has got to be a better way** of assisting those couples who need some help and support at what is plainly a difficult time for them and for their children. The task of identifying, developing and then funding a better way to achieve good enough co-parenting between separated parents is a matter for society in general, policy

³ <https://www.judiciary.uk/wp-content/uploads/2019/04/Resolution-Key-Note-2019-final.docx-8-APRIL-2019.pdf>

makers, Government and, ultimately Parliament; it is not for the judges. My purpose today is, therefore, simply to call out what is going on in society's name, and at the State's expense, and invite others to take up that call."

I am very pleased to report that my exhortation to identify and develop a better approach has been taken up in full measure by the 'Family Solutions Group', a subgroup of the President's Private Law Working Group.

The FSG, which is chaired by Helen Adam, is made up of some 20 members drawn from the fields of mediation, family therapy, social work, academia, direct provision of services to parents, the Civil Service, judiciary and the Law. Their report, published in October 2020 and entitled 'What About Me?'⁴ is, to my mind, absolutely spot on in identifying the gaps that currently exist in the provision that is available to support and guide separating parents and in spelling out in considerable detail how those gaps should now be filled.

Many of you will have noted the publication of the report and may, indeed, have read it last year. It was generally held to be 'a good thing' but, I fear, unless something more is done 'What About Me?' will simply be a further addition to the pile of worthy endeavours in this field which has grown throughout my professional lifetime. I began this address by explaining that my principal priority for the next 3 years was to press for and achieve real change in the field of Private Family Law. If asked to crystallise that priority into one sentence I can easily do so. My aim is to use the FSG report 'What About Me?' as the blueprint for radical change and to do all that I can to press for its recommendations to be implemented.

There is not time in this address to do more than indicate headline points from the FSG report. Before doing so I quote from one of its opening paragraphs identifying just why this issue is so profoundly important not just for the immediate care arrangements for a child, but for their long term development throughout childhood and their ability to function successfully as an adult in due course:

"It is critical to recognise that children are at risk of harm when parents separate. Family breakdown is a time of great vulnerability and research has consistently shown that unresolved parental conflict is harmful to children. Destructive inter-parental conflict affects children of all ages, across infancy, childhood, adolescence and even adulthood.

⁴ <https://www.judiciary.uk/publications/what-about-me-reframing-support-for-families-following-parental-separation/>

The way in which parents communicate with each other impacts children's long-term mental health and future life chances." (Paragraph 6).

In terms of headlines, the report identifies the following key factors as part of an entirely different regime of support which is 'holistic and relational':

- "A framework and language which promotes child welfare and a co-operative parenting approach.
- Access to information and direct services for children.
- Mechanisms for the child's voice to be heard at the time when decisions are being made which affect them.
- Access to information and direct services for parents about how to parent following separation.
- A consideration of the emotional state of the parents and the impact this has on their parenting decisions.
- A multi-disciplinary response, involving therapists, parenting specialists, mediators and legal services.

These do not form part of the administration of justice and currently there is no framework for the provision of suitable services, clearly signposted and accessible to all".

These cases would benefit far more from a social work based response, rather than being placed before a judge.

The report does not propose any change in the legislation, rather its recommendations are essentially about communication (nationally, locally and professionally) in a move away from a 'justice' response to parental fallout towards cooperative separated parenting, where child welfare is the central and overriding factor.

At present responsibility in England for these issues is shared between the Ministry of Justice, Department for Education and the Department for Works and Pensions. In Wales there is a 'Families Division' of the Welsh Government and a minister whose brief includes children and families. The FSG calls for there to be a single family lead within Government in England to provide coherent oversight of the provision for children and parents.

The FSG report also calls for a wide public education campaign to reframe family breakdown away from 'justice' language, and towards an understanding of child welfare. Within this an authoritative website providing clear, accurate and neutral information is essential. Training

and resources should be provided to GP's, schools, health visitors, CABs and others so that they can direct parents at an early stage to appropriate resources when there are signs of family breakdown. Separating parenting programmes should be the norm for any separating parents, and not simply those who come to court and are ordered to attend them.

A shift in language away from that of legal 'disputes' towards that of supporting parents to resolve issues together is required. In this regard, if I may say so, Helen Adam's recent article in Family Law is of particular value.

There Helen Adam talks about the need for a new language around family breakdown. This matters, she says, because of the growing understanding of the harmful impact on children of parental conflict and the duty on us not to use terminology or language which undermines the inter-parental relationship. At the same time our understanding of the prevalence and incidence of domestic abuse has changed and we need to be mindful of the language needed for those vulnerable to abuse, centring it around acknowledgment of the impact of trauma and ensuring safety as a priority.

Holding those two principles alongside each other needs careful use of language. The language of adversarial litigation is unhelpful. Members of the Family Justice Young People's Board commented that they did not like their family issues being referred to as 'Smith vs Smith'. Too often, the language we use is that of those who work in the system which can be confusing for parents and young people whose lives are affected.

The key messages are:

1. Safety first – if needed specialised services and the court are there to protect you.
2. In the absence of safety concerns – the law expects parents to exercise responsibility, not rely on rights, to prioritise child welfare above negative feelings about each other.
3. Getting away from the adversarial language promoting a 'fighting for my rights' mentality (and from the promotion of this by the use of such acclamations as 'somebody you would want in your corner' found in some legal directories and websites).

On the issue of language the FSG report says this:

"The task of parenting a child continues from birth until well into adulthood. This task continues for parents who are together, for parents who are separating and for parents who have separated. The end of a couple's relationship does not mean an end to

parenting responsibilities; they may be exercised differently post-separation, but they continue, nonetheless.

The FSG propose two separate pathways where a case comes to Court. For those involving safeguarding and the need for protection there should be ‘the safety pathway’. Where safeguarding and protection are not an issue ‘the co-operative parenting pathway’ should be used with a long-term goal of achieving co-operative parenting and shared responsibility. You will note the use of the phrase ‘co-operative parenting’ in contrast to that which has hitherto been applied, ‘co-parenting’. The new phrase is preferred as being more readily understandable to parents and others.

“In short, we also need to reframe language in the information and support which precedes the justice system, to that of two parents who, where safe to do so, will continue the task of parenting from birth until adulthood, whether together, separating or separated.” [original emphasis]

The FSG recommend that, at a very early stage in the process of parental separation, an ‘information assessment meeting’ (IAM) should take place through a Family Hub or similar non-court resource. At an IAM a Family professional will conduct an early assessment and triage the family’s needs. For example, where safeguarding and protection are involved, such cases are likely to be pointed towards the Court. Other cases are more likely to be directed to non-justice resources. In this regard, the valuable “Mediation in Mind” pilot, run by the DWP is seen as a model for an holistic approach offering a combination of legal information, counselling and mediation in such cases.

Parental Dispute Resolution: What are we doing now?

The FSG report looks to the future. What I have said so far in describing my support for the proposals of the Family Solutions Group has, therefore, been aspirational. It is what I will be pushing to try to achieve over the next one or two years. Success in that endeavour cannot be guaranteed, and it is important, therefore, also to give full focus to what we can achieve within the present system without significant reform and for me to tell you what we are doing now.

The proposals of the Private Law Working Group and the work of the Harm Panel are now being developed into the form of two pilots which are to start up early next year in North Wales and in Dorset.

The pilots will trial the new core model that has been developed by the Private Law Advisory and Pilot Group involving:

1. A Child Impact Assessment by a multi-agency panel led by CAFCASS to gather information from all relevant sources, to identify any safety issues and the needs of the family.
2. A resulting 'Child Impact Report', with recommendations for next steps to enable a triaging legal adviser or judge to decide how best to proceed, whether that be a further welfare report, a fact-finding hearing, a short hearing to deal with relatively straightforward issues, a directions hearing or, when safe to do so, pausing the proceedings and referring the parents to an out-of-court service.
3. When an outcome has been decided or agreed, in most cases agreeing a non-hearing review by CAFCASS at an appropriate time to check the order is working, clarify any uncertainties and refer to further support if the parents need it. This it is hoped will reduce the number of cases returning to court, which are currently 30% of all applications.

In contrast to much that I have said thus far, the pilots are intended to encompass all private children cases coming to those courts, including those that involve allegations of domestic abuse.

In summary the pilots aim to develop a new more investigative approach and involve the following:

- Developing ways to promote all forms of non-court dispute resolution, including a version of the MIAM processes;
- Possible development of the 'Mediation in Mind' project that has been funded by the DWP which provides a funded package of support including legal information, counselling, mediation and other meetings or group work;
- Enhancing the effectiveness of parenting education through the SPIP (or WT4C in Wales) programme;
- A less adversarial approach at court hearings;
- Maximising the benefits of digitisation in the court system, simplifying language and providing suitable 'nudges' towards non-court dispute resolution along the way;
- Enhanced early social worker assessment by CAFCASS or CAFCASS Cymru;

- To test out differentiated pathways, or ‘tracks’, according to the type, complexity (including in particular safeguarding issues) and urgency of the case, with returning cases being allocated to a special track;
- Assessing different structures around the ‘gatekeeping’ stage;
- The development with CAFCASS and CAFCASS Cymru of a ‘Child impact’ statement, so that parents can see (perhaps at an early stage) from the child what impact or effect the proceedings are having upon them;
- To reduce the number of returning cases, including the facilitation of more court reviews post-final order.

Alongside these largely procedural steps within, or immediately around, the court process itself, the pilot areas will develop the concept of a ‘Family Hub’ which will operate separately from the court and to which families will be directed as the first port of call, rather than issuing a court application. In the course of developing the ideas that have led to this proposal, some 3 years ago all of the various agencies and organisations in Kent who are or might be involved in supporting families at a time of breakdown were summoned to a meeting. It was very successful. I am told that many of those attending were surprised to find just how many other agencies were available and, indeed, were offering similar or complementary provision to their own, yet were unknown to each other.

The aim of the Family Hub is to draw together, and be a co-ordinating focus for, the circle of local providers. This arrangement will have a number of benefits, two of which are that the full extent of local provision will be known, and can be made known to parents who need support. Secondly, each of the local agencies will now be aware of all of the others and there will be opportunities for co-working, pooling of resources and sharing of ideas.

The sorts of agencies involved will run from those who are already close to the Family Justice system, for example providing support for victims of domestic abuse or sexual abuse, but the net widens out to include those working in the fields of mental health, substance misuse, housing, immigration, adoption and fostering, education, children and young and people and, more generally, health.

Following an initial assessment by a core multi-agency team, the family may be referred to one or more of the available local support services, or to mediation, or to a parenting programme or, where it is appropriate to CAFCASS or, finally, in a clear case, to the court. Reference to

other agencies may, in addition, also lead to a recommendation for court involvement. Cases that are heading to the court may, in addition, be re-referred back to the hub, or for mediation or some other form of non-court support where this is safe.

The FSG report draws attention to the fact that, through Government initiative and funding, which has been enhanced by additional charity support, there are currently some 150 'Family Hubs' operating and responding to local needs, with each functioning differently through local partnerships. The report suggests ways in which these Family Hubs could be further developed and given additional focus in the context of separating parents.

In Dorset it is hoped to underpin the Pilot by the development of Family Hubs, bringing together an integrated and coherent structure of services for separating parents and their children together with wider support from education, health and faith groups. Parents and children will be able to access a Hub website providing information and signposting them to services in the hope they can avoid coming to court. For those that need it, access to a family professional will enable assessment of need and meaningful signposting. In more complex cases a multi-agency team would assess domestic abuse, substance misuse and mental health issues and help parents access services and, when needed, support application to the court for protective measures. Liaison between the Hub and CAFCASS will help inform the Child Impact Assessment.

A separate, and most welcome, development has been the introduction of the Family Mediation Voucher Scheme launched by the Ministry of Justice in March 2021. The scheme offers families financial assistance of up to £500 towards overall mediation costs. The aims are to promote the benefits of mediation and encourage wider use, as well as to alleviate some of the pressures faced by the Family Court. To date, the Family Mediation Council have distributed just over 2,000 mediation vouchers, averaging 130 vouchers per week, where 77% of cases have reached whole or partial agreement. As a result of the high demand for Mediation Vouchers, an additional £800,000 has been allocated by the MoJ, almost doubling an initial £1,000,000 investment made earlier this year and therefore aiming to help around 2,000 more families.

In a further initiative the MoJ has launched a call for evidence, seeking views on the best ways to settle family, business and other civil disputes away from the Court and to support the development of more effective dispute resolution mechanisms.

A great deal of work over a significant period has led to the developing of the various recommendations that are now being trialled. Although conducting pilots, which may take 18 months, delays the overall introduction of this new model of working, it is important that the way of operating the model is thoroughly tested before every court is expected to adopt it. The Family Courts could not be more hard pressed at present. I am very grateful to Judge Gaynor Lloyd in North Wales and Judge Dancey in Dorset for agreeing to work these proposals up. The result of their work should be that if, after evaluation, the scheme goes live nationally, it should be relatively straight forward for each of the other courts to establish it in their area.

But, it is not necessary for courts to wait for the pilots before taking any action. One positive benefit of the pandemic has been the temporary flexibility afforded to local courts by PD36Q. More than half of the DFJ areas have already adopted some enhanced form of gatekeeping based upon what is known as ‘the Watford model’ or something similar. By this method cases are not only assessed and allocated within the court when they are first issued, the gatekeeping decision is re-visited once further information has been obtained. Also, as is the case in Kent and elsewhere, the task of drawing together local agencies to form a co-ordinated source of information and support does not need to await the outcome of the pilots. I am able to announce that the degree of local flexibility introduced by PD36Q will endure and that from March 2022 the temporary PD36Q will be replaced by a permanent PD36Y. There is no time today to say more about these important strategies, which have been carefully developed in individual court centres, but I am convinced that they are already providing the bedrock for the greater change that is to come.

Domestic Abuse

In all that I have said thus far I have been largely concentrated on those cases that do not need to come to court and do not involve elements of domestic abuse or otherwise require access to the court’s protective jurisdiction. I have done so in this address because of the additional impetus that I consider needs now to be given to enabling the families in those cases to resolve their dispute away from the court setting. Cases of domestic abuse, or where other safeguarding issues arise, are in a different category and are already afforded a very high priority in my work and in the work of the Family Court generally. It is, awfully, the case that allegations of domestic abuse feature in more than half of all the cases that come before the court. Addressing

and appropriately dealing with domestic abuse is, therefore, and must certainly remain, at the very heart of the court's work.

Much is currently happening to improve the approach that we take to domestic abuse in the Family Court. The principal focus is, of course, the implementation of the Domestic Abuse Act 2021, which is expected to be in force by April 2022. The Rules Committee is developing a raft of amendments to the Court Rules and Practice Directions. The Judicial College is formulating a new training module to coincide with the implementation of the Act. In addition to education in the black letter law and procedure underpinning the Act, a most important element (in my view) will be to enhance each judge's understanding of the traumatic nature of domestic abuse upon victims, and the impact that such trauma may have on their ability to participate in proceedings. The proposal is that it will be a requirement that each and every Family judge must complete a new one-day training course in addition to any other regular continuation training. Separately, an online training module dealing with allegations of sexual assault in Family proceedings is now available to all judges and magistrates. In like manner, training of Family magistrates is being revised and updated.

Already, it is clear to me (from the questions I am asked whenever I address a group of family judges) that the key messages transmitted by the Court of Appeal in the four cases that travel under the collective name of *Re H-N* are hitting home. In particular, the message, that courts must always look to see whether there is an over-arching pattern of coercive and controlling behaviour has been and is being taken up by judges at all levels. One aim of the new training module will be to assist judges in how to conduct fact-finding hearings in a way that focuses on coercive and controlling behaviour, avoids slavish adherence to a Scott schedule of allegations, yet keeps the timing of any such hearing within reasonable and proportionate bounds.

One specific problem which is said to arise in cases of domestic abuse is the not infrequent counter assertion that the person making allegations of abuse is themselves causing harm to the child by 'parental alienation'. This is a complex and sensitive issue, and in the short time available in this address I seek to make one and one point only about it. Where the issue of parental alienation is raised and it is suggested to the court that an expert should be instructed, the court must be careful only to authorise such instruction where the individual expert has relevant expertise.

This regard I draw attention to the fact that I am about to issue a General Memorandum⁵ on the topic of the instruction of experts. Within that I stress that an ‘expert must demonstrate to the court that he or she has the relevant knowledge and experience to give either opinion evidence, or factual evidence which is not based exclusively on personal observation or sensation’. I also emphasise that an expert must be independent and impartial and that ‘the court will refuse to authorise or admit the evidence of an expert whose methodology is not based on any established body of knowledge’. I conclude by saying:

‘The Family Court adopts a rigorous approach to the admission of expert evidence. As the references in this memorandum make plain, pseudo-science, which is not based on any established body of knowledge, will be inadmissible in the Family Court.’

A second specific matter I wish to highlight is the involvement of Independent Domestic Violence Advisers [‘IDVA’]. In the court process IDVA’s have a valuable role to play. Like that of a McKenzie Friend, in the courtroom their function is to provide individual support to one of the parties. The MoJ Harm Panel report noted inconsistencies in practice as to whether or not IDVA’s would be allowed into the courtroom. To my mind, there are unlikely to be many cases where it is appropriate to refuse a party’s application to be supported by an IDVA at a hearing. In like manner to an application for special measures, a request for an IDVA should almost invariably be granted. The IDVA is simply in the room as a supporter to enable the party to participate effectively in the proceedings. In addition, specialist support can be essential where the party is a victim of abuse and where plans for their safety, both in and outside the courtroom, must be made.

Further, it is the case that DAA 2021, s 63 came into force on 1 October 2021. Section 63 is important in that it establishes a default position with respect to special measures in Family proceedings, so that where a party or a witness ‘is, or is at risk of being, a victim of domestic abuse’ carried out by another party, a relative of a party or a witness in the case, ‘it is to be assumed that’ the quality of their evidence and/or their ability to participate in the proceedings ‘are likely to be diminished by reason of vulnerability’ – thereby triggering the need to consider special measures under Family Procedure Rules, Part 3A.

⁵ Based upon *Kennedy v Cordia (Services) LLP (Scotland)* [2016] UKSC 6.

Conclusion

Looking to the future, the challenges with respect to Private Law are clear. The Family Court is not currently in a good place. The substantial backlog that existed before the pandemic has now grown very substantially. The volume of Private Law applications to the Court continues to increase month on month on a seemingly endless trajectory. All of the measures I have described are aimed, in various ways, at addressing the following four goals:

- To improve the identification of and response to domestic abuse,
- Pave the way to reform so families experience a smoother more efficient process which delivers them more quickly to focused help, and, where appropriate, does not bring them to the door of the court,
- To increase the court's ability to engage with and conclude a case, and
- To reduce backlog.

I hope that, if I am invited to address this conference in 3 years time, around the time of my retirement, I will be able to describe a landscape that has very substantially changed; and, as I stated at the beginning of this address, achieving that change is now my top priority.

Sir Andrew McFarlane
President of the Family Division
8 October 2021