

Rt. Hon. Sir Andrew McFarlane, President of the Family Division

**Address to the FDAC National Networking Day for local sites
London, 25 October 2018**

I'm very pleased to be here today. What's striking, having been a High Court judge in the system until seven years ago, is that if you'd asked me about FDAC back then I would only have a picture of Nick Crichton and his London FDAC. I know it began to be rolled out, but to be in a room today with all of you representing FDACs in different parts of the country tells the success story of the Family Drug and Alcohol Court.

I was always a fan of FDAC. I watched Nick in operation in the early days and the idea of problem-solving courts is one that I readily accepted as something that judges ought to be attempting in the right cases, developing our system to accommodate that way of working. My worry then, and the worry of everybody, was that Nick was such a star that the success of FDAC in London might be idiosyncratic, related to him and his personality. That has been proved wrong, happily. The FDAC model has been replicated with great success in your areas and elsewhere.

FDAC is certainly the most assessed and researched bit of the Family Court, with government and social scientists and others interested in the model. I've been re-reading the research documents and the figures speak for themselves. I echo the view that FDAC is "arguably the most radical development in family justice since the Children Act 1989".¹ In my view it is both radical and successful and you are all familiar with the statistics that lead me to take this view.

The striking thing from the research is what it shows about the 'stickability' of the outcomes, the 'durability' of the arrangements made, and the changed lifestyle of parents coming out of FDAC. These are far more successful than the arrangements made at the end of care proceedings where children go home to their parents without this key intervention. With FDAC you've got the parents' full attention at the beginning of proceedings, at the time when they are facing the possibility or probability of losing their children permanently to adoption or another arrangement, and when you can help them engage in what they know deep inside themselves they need to engage in to address their drug or alcohol dependency. So it's very good news to me to come back into this system after seven years away and find so many of you here today from sites across England.

I think it would be easy if you're in the FDAC system to lose that perspective and feel a bit in the doldrums at the moment because government funding for the FDAC National Unit has come to an end.² Some of the press reports got this wrong, reporting that the whole of FDAC was closing but, as you know, that's not the case. The National Unit was important. It was a layer above the delivery of the service in the local court centres. It acted as an umbrella, a support, a focal point, but it wasn't essential for the running of the service itself.

¹ Harwin J, Ryan M and Kershaw S (2018) 'The Family Drug and Alcohol Court: A Problem-Solving Approach to Family Justice' in Shaw M and Bailey S (eds) *Justice for Children and Families: A Developmental Perspective*. Cambridge University Press.

² For more about the work of local FDAC sites and the National Unit, see www.fdac.org.uk.

It's regrettable that the Unit hasn't been supported sufficiently to continue its work but that doesn't mean that you are not able to function and make the difference that you do for the children and their parents who come to your local FDAC service.

So I hope you are encouraged by knowing how good FDAC looks from my perspective, how important is the work that you do, and how well it has developed from the first FDAC court all those years ago. I know it isn't easy. You are dependent on local authority funding that runs from year to year and so you live all the time on the edge of a cliff, wondering if you will still be here next year. But the statistics speak for themselves. We've got to keep finding local authorities who are prepared to accept that spending money now, to avoid spending two and a half times as much money later, is something they must be prepared to do. I'm pleased that some are finding ways to make this possible.

At present I'm visiting every Designated Family Judge's court in the country. In Brighton this week I heard that one of the local authorities hadn't signed up to FDAC in full but they had decided to develop their own in-house assessment team, including psychologists, psychiatrists and other expertise, alongside the social work expertise that is needed, to offer the service to families who would not otherwise gain access to the FDAC approach. So it's good that the FDAC model one is one that is being adapted by local authorities who see its value.

I'm also grateful to East Sussex for reminding me that video links can be a useful way of including parents in court hearings if they are away from home in residential rehab. I understand, too, the problem of geography for parents in getting to court and I can see that, if it fits, once the case is up and running and monthly monitoring and checking is what is needed, video hearings could be helpful. There are advantages, in that the court video kit is in place already, and parents don't want to be losing time at work etc. But we shouldn't assume this will bring large savings to courts.

I'm an FDAC fan, as I said, and I think it's important as the new President to say that I take exactly the same view of the importance of FDAC as did Sir James Munby, my predecessor: it empowers the parents who engage in the process. It enables them to develop a robustness that they wouldn't otherwise have and it produces orders and arrangements that are more durable. The 'stickability' of the FDAC parents who succeed is what marks them out from the ordinary run of cases. But it would be wrong for me to think "well, that's FDAC, and that's what we do about the court process." No, there may be other ways in which the problem-solving court can be incorporated into our work and I'd be grateful to hear from you, today or in other ways, of any suggestions you have about that.

The standard care proceedings model is a blunderbuss, and a rather brutal process. It's conducted under high stress and to a tight timetable and it doesn't offer the opportunity to focus on and address the underlying problem or range of problems that have led the family to be before the court. It's a process, but there may well be ways of developing it, to increase the use of problem-solving in the right cases. For example, I'm also a supporter of PAUSE, which as you know is an intervention that happens outside proceedings, but some of those families might be helped in the way that FDAC helps families when they are in proceedings.

What I'm saying is that we mustn't be complacent. We should be thinking of ways of taking forward what we are learning from FDAC. So well done to you all for taking part in this work. There are difficulties to overcome and I want you to know that I will do whatever is needed to improve the climate for FDAC to be developed and sustained, both in your local area and nationally.

I've been invited to give a rather broad-brush address to you this morning, about my hopes for my Presidency and what strikes me as I come back into the family court loop after time spent in the Court of Appeal.³

You will know of the stress associated with the rise in public law applications, where local authorities apply for care or supervision orders. Those have gone up by 25 per cent in the last three years or so. They haven't carried on going up at quite that rate but the increased level has been maintained. Sir James Munby called that a crisis, and he said it was a crisis the cause of which we really didn't understand. He and all of us were very fortunate that the Family Rights Group (FRG) were commissioned to undertake a project, the Care Crisis Review, which in a very short timetable produced a very comprehensive account of what's happening in the system now, with a range of possible causes and solutions.⁴ I hope you will read the Review findings because quite a bit of what's spoken of, in terms of the causes for these applications coming, will be directly relevant to the cases you're dealing with.

Some of the causes highlighted are way outside our ability to control them. One is austerity. Another is the loss of services that might have propped up a family in the community, so the options for social workers have been reduced and yet the court is still there as an option to move the case on. Universal credit and the housing benefit cap have been said to have an impact, and those, too, are not something that we are going to be able to cure through our court work. But what's happening now is a drilling down on the bits of the Care Crisis Review that might be something that we have a direct input into and an ability to work with. It's worth adding here that even though we won't have control over answers to some of these problems, such as the lack of resources for families, we need to be communicating with each other so that we can make a concerted case to the right people. I am happy to take part in that. We need to capitalise on the Care Crisis Review communication model: bringing everyone together to talk about what can be done.

One of my concerns is that we, the courts, haven't got the resources to cope with the rise in numbers. We have the funding for proceedings but we don't have enough people applying to be judges. We're running up the down escalator in terms of keeping up with the workload and the pressure that that causes is not right for children and families or anyone else. The pressure also means that the statutory timescale for care proceedings is largely not being met in any area of the country. That's not sustainable either and it's why I need to

³ Sir Andrew spoke about the Reform Programme for the court service and the judiciary, the impact of changes in public and private law cases, and the well-being of the professionals involved in family justice cases. Rather than repeat this section in full, we refer readers to his address to the Association of Lawyers for Children in November 2018, where he developed these ideas further. For the text of the full speech, click [here](#).

⁴ <https://www.frg.org.uk/involving-families/reforming-law-and-practice/care-crisis-review> for the main report *Options for Change*, and for information about progress on the options following publication in June 2018, including restoring to *Working Together to Safeguard Children* the importance of partnership work with families.

understand what is going on. If the water table for cases coming to court has risen I want to see what we're going to do internally to service these case appropriately, properly, and in a timely way. All of us have to be thinking about what can be done.

And you, FDAC, have an important role to play in this. Some of the parents coming into court in ordinary proceedings may well be amenable to FDAC and, of course, FDAC doesn't just solve the case on the day. When, as it does, it helps parents make the life changes, it is likely that it will also prevent a parent returning to court with either the same child or subsequent children. So FDAC is relevant to addressing parents' difficulties and also addressing the difficulties of rising numbers of proceedings.

My plan, three weeks into my new role as President, is to carry on going round the country, developing my thinking by listening to as much as I can from as many people as possible, building up a list of things that need to be addressed urgently. Happily, the government – the MoJ and DfE – are working together well on this at the moment, looking at what can be done to reduce some of the stresses that I've described. The Care Crisis Review team will carry on shadowing what departments are doing, and the progress being made by others, and it will be taking forward the Review's proposals for change.

There are ways in which I hope that you, too, will contribute to the hopes and challenges ahead:

- The Reform Programme will continue to be introduced over the next 18 months. Part of the process is consultation so, if the changes impact on you, especially in ways that aren't helpful, you should engage with the consultation and let us have your views.
- You will be finding that the Local Family Justice Boards (LFJBs) are becoming more active. If you are invited to join in any activities to contribute to the debate that I've just sketched out for you, I really hope you will do so, because of your particular perspective on how cases of this sort can be addressed.
- Think about which other care cases would benefit from FDAC's problem-solving approach.

By next Spring I hope to be clearer about what is happening, and about what is being and might be done to address the problems. In May 2019 we have the annual President's Conference (for the Designated Family Judges from each area) and I will use that national forum for us to come up with a detailed plan.

I want ideas from you all, to help me in this task. Please don't be shy to come forward and tell me what you think. I am keen to listen and easy to find.⁵

⁵ Email pdf.office@judiciary.uk