



Family Justice Council
Minutes of the meeting held on 14th April 2014
Royal Courts of Justice, London

Present:

The Honourable Mrs. Justice Pauffley (chair)
Mark Andrews, Justices' Clerk
Sue Berelowitz, Deputy Children's Commissioner for England
Professor Anne Barlow, Academic
Alex Clark, Secretary to the Council
Martyn Cook, Family Magistrate
Sophia Fraser, Family Justice Young People's Board Member
Tessa Fyffe, Assistant Secretary to the Council
Dr. Elizabeth Gillett, Clinical Psychologist
District Judge Liza Gordon-Saker
Fiona Green, Cafcass
Amanda Jeffery, Deputy Director, Judicial Office
Angela Joyce, DfE
Bridget Lindley, Consumer Focus, Parent Representative
Rebecca Manning, Family Justice Young People's Board Member
Her Honour Judge Katharine Marshall
Joe Murphy, MoJ
Dr. Heather Payne, Consultant Paediatrician (by telephone)
Dominic Raeside, Family Mediator
Andrew Shaw, President's Office
Emma Weetch, Cafcass
Daphna Wilson, Family Justice Council Secretariat

1. Announcements and Apologies:

Christina Blacklaws, Private Law Solicitor
The Honourable Mr. Justice Cobb
John Daly, Assistant Director Children's Services
Alistair Davey, Welsh Government
Lynette Evans, CAFCASS Cymru
John Hall, MoJ
Paul Harris, HMCTS

Caroline Little, Public Law Solicitor

The Right Honourable Sir James Munby, President of the Family Division (chairman)

Malek Wan Daud, Family Barrister

Malek Wan Daud and Caroline Little have been re-appointed as Council members, by the Secretary of State, for a further two years. Members expressed their gratitude for Malek and Caroline's continued contribution.

The two representatives from the Family Justice Young People's Board, are expected to arrive during the coffee break, in time for their presentation at the end of the meeting.

2. Minutes of the last meeting and matters arising

The minutes were approved without amendment.

Matters arising

Public Appointments: Preparations for the campaign to recruit the new Family Silk, Consumer/Parent representative and Magistrate members is underway. The challenging task of identifying panel members and dates for the sifting exercise and interview is now complete. The aim is to circulate the adverts in July, with a September closing date for applications, and interviews in October. This timetable is subject to final approval from the Secretary of State. Members will be kept informed. The Council would like to thank Bridget Lindley and Martyn Cook for their continued attendance at meetings until their successors are in place.

Risk Assessments: Given the current work priorities set out in the draft business plan, this subject area will not be pursued at this time.

Collating information in private law hearings: The MoJ will shortly be announcing the launch of an experts' pilot. It is anticipated that a final decision will be made, followed by an announcement in May.

Transparency: Members requested that this item be added to the agenda for the next meeting. It was reported that publishing judgments is taking up a large proportion of a Circuit Judge's time. The judge checks that the judgment is suitably redacted and is the only person who can publish the judgment by email, which unfortunately cannot be delegated to administrative staff. HHJ Marshall noted that one of her cases was published, and appeared on the front page of the local paper the next day. Her name on the judgment was sufficient to identify the area within which the local authority and parties were based. Members called for monitoring of the effects of the transparency process, though it was agreed that the Council was not best placed to undertake such a task. Sue Berelowitz invited Alex Clark to discuss this further, and the OCC would wish to explore the possibility of assisting under its statutory duty.

3. Business Plan 2014/15 and feedback from FJB meeting

The draft business plan has been circulated as Paper 2 for approval by members. The plan was discussed at the last meeting of the Executive Committee on the 11th March and presented to the Family Justice Board at the last meeting on 8th April by Christina Blacklaws, with Alex Clark in attendance. Members were invited to endorse the plan. Fiona Green requested the inclusion of dispute resolution services under the private law work in Activity 4. Sue Berelowitz requested the inclusion of a formal consideration of the evaluation of Transparency. Bridget Lindley would like members to consider the possibility of the Council maintaining a 'watching brief' of the changing family law landscape. She would like to explore the feasibility of this as an activity in the business plan. There has been a vast increase to the number of calls received by the FRG advice line, with a significant number of queries at the early stages of pre-proceedings. The FRG has a detailed database of information from callers within public law proceedings, at the pre-court stage and she was of the opinion that direct feedback from service users would be essential.

Angela Joyce informed members that the DfE has recently published revised statutory guidance on Court Orders and Pre-Proceedings. This revised volume of guidance has been issued in light of the family justice provisions in the Children and Families Act 2014 and changes in practice following the Family Justice Review. The content is intended to provide a high-level guide to the law, setting out the different private and public law orders, including placement and adoption orders, and processes relating to care and court proceedings (including pre-proceedings). This guidance replaces the 2008 guidance 'The Children Act 1989 guidance and regulations: Volume 1- Court Orders and Chapter 8 of the statutory guidance on Adoption July 2013'. The guidance is intended for use by local authorities: social work practitioners, lawyers and Directors of Children's Services. It may also be a useful reference tool for key local authority partners. The link to the guidance is here:

<https://www.gov.uk/government/publications/children-act-1989-court-orders--2>)

Mark Andrews advised members to be clear on what work the Council does itself to produce a product, and what the Council takes forward via the Family Justice Board, by providing advice. HHJ Marshall was clear that the area of litigants-in-person required urgent attention by the Council. In her view, the landscape is now unrecognizable, with court staff bombarded by emails with no lawyers available to sift through this information. DJ Gordon-Saker agreed with this description with regards to the district bench in the PRFD.

Liz Gillett gave her apologies to members for the loss in momentum of the BPS work, which was due to a period of ill-health. The work will now resume.

4. Advice to FJB

Paper 3 is a note of a meeting with David Norgrove, submitted to the Executive Committee for discussion. There has been a request for the Council to provide regular advice to the FJB which is copied to ministers. The Committee proposes that the Council submit two papers a year on key issues to the FJB. It is hoped that members will discuss and provide topics for

the next paper. HHJ Marshall and Bridget Lindley were willing to be involved in producing a paper on the impact of the reforms from the parents' perspective. Members discussed how this information could be obtained. Bridget Lindley suggested starting with the FRG and a number of other organisations for which she would provide contacts. This could also consider the impact of Transparency. Sue Berelowitz suggested that other areas such as school bullying, would reflect the impact of Transparency, though members questioned how this could be evaluated. It would be important to ascertain the views of parents as well as children. Sue visits children in prison once a month and there are a number of concerning issues emerging from these visits, which would benefit from a deeper inspection by the MoJ. Angela Joyce agreed to make enquiries as to whether the DfE collates information that would be helpful.

This type of evidence gathering would involve family interviews or involvement in a focus group, which could be difficult. Mark Andrews noted that if the purpose of Transparency was to increase public confidence, there should be an evaluation of public confidence. If there is no change, and there are concerns of causing harm to children, this should be captured. HHJ Marshall noted that there are many lessons to be learnt. Due to work commitments, she has only had the time to publish one judgement, and that was on the front page of the paper the following day. Dr. Heather Payne referred to a useful document on anonymisation published by the Information Commissioner. It mainly deals with numerical and statistical data, but the principles are the same as for court judgements. The section on penetration testing is of particular interest i.e. can you re-identify an individual from the anonymised data released, by adding in other publicly available data such as names of relatives that might appear on social media. There is also further information on how to anonymise written documents. The document can be found at http://ico.org.uk/for_organisations/data_protection/topic_guides/-/media/documents/library/Data_Protection/Practical_application/anonymisation-codev2.pdf

Joe Murphy reminded members that the FJB is unlikely to have a budget for this piece of work, but the Council may wish to raise this as a research priority.

5. Debate 2014

Members considered a list of possible topics for the next FJC debate, as suggested by the Executive Committee. The first topic 'Is the Single Family Court open for business', suggested by Mr. Justice Cobb, is perhaps the most suitable topic, especially as the debate is planned for November 2014. The Chair invited members to endorse this topic for the debate. Members were also invited to consider possible speakers, for the secretariat to contact and invite. It would be helpful if three or four members would volunteer to assist the secretariat with this part of the event planning.

6. Justice Committee Inquiry on LASPO – FJC response

The four members leading on the FJC response are Christina Blacklaws, Dominic Raeside, Caroline Little and Malek Wan Daud. As three of the four members were not present, Tessa Fyffe will make contact with them after the meeting for an update. Dominic Raeside

informed members that he has joined the Mediation task-force set-up by David Norgrove. There is work to be done on gaining a better understanding of the mediation market, and addressing the current small number of mediations. There is an idea about a pilot to encourage solicitors to refer clients to mediation. Dominic has a meeting on the 8th May with Simon Hughes to take this further.

7. Conference 7 February 2014 - feedback

The rapporteurs have submitted the summary and chapters for the Jordan's special edition of Family Law, with the President submitting a foreword. It is hoped that this will be published in May. The feedback received was largely very positive, though a few delegates expressed regret at not being able to benefit from attendance at all of the parallel sessions (as was the case at the previous Dartington conferences where all sessions were plenary sessions). Other delegates expressed a view that there may have been too much content for a one-day conference, and not enough time for networking and discussion. Following discussion between members and Alex Clark, it is hoped that the conference will be held every 18 months, subject to funding and establishing a dedicated planning committee, primarily drawn from the membership of the Council.

8. Triennial Review - update

The Judicial Office project team is ready to take the review to Stage 2, but they are yet to receive formal confirmation that the Stage 1 report has been agreed by ministers. The secretariat and the JO project team have started some preparatory work on Stage 2, and paper 5 has been circulated to outline the process for members.

9. Protected Parties

Malek Wan Daud circulated the current draft guidance as Paper 6. The President's Private Law Working Group is working on a similar document for private law proceedings. The President would like one unified document to address both public and private law proceedings, and is considering whether this piece of work could be completed as part of a wider project on vulnerable witnesses. He would like a group to be led by a High Court Judge, calling on a number of Council members to participate. Bridget Lindley and Dr. Liz Gillett would like to be involved. Some members were of the view that the issue of best evidence for vulnerable witnesses is a separate matter, and would prefer to keep the document on capacity as a distinct piece of work. HHJ Marshall has some comments on Malek's draft, which she will forward to him by email, including observations on liaison with the Office of the Official Solicitor. The Chair invited members' comments on para 53 of the guidance as drafted by Malek, where he proposes that the IRO should consider making a request that the LA make a referral for an independent advocacy service for the parent. Members were largely in agreement with this proposal, and Angela Joyce agreed to put Malek in touch with the appropriate DfE official for assistance.

With regards to vulnerable witnesses, members noted that there is a considerable amount of useful guidance in existence for use in criminal proceedings, with recent work by Joyce Plotnikoff and Keir Starmer QC. However, the protection in the criminal courts does not extend to vulnerable witness in family proceedings in the way that it should. Alex will update members as and when this project group develops.

10. 'Matrimonial Property, Needs and Agreements'- FJC input

The Executive Summary to this report published by the Law Commission was circulated for information and discussion. Three recommendations were made relating to the FJC which read:

9.1 We recommend that the Family Justice Council prepare guidance as to the meaning of financial needs, encouraging the courts to make orders that will enable the parties to make a transition to independence, to the extent that that is possible in the light of choices made within the marriage, the length of the marriage, the marital standard of living, the parties' expectation of a home, and their continuing shared responsibilities. **[paragraph 3.88]**

9.2 We recommend that the guidance prepared by the Family Justice Council be addressed primarily to the courts, but that it should be produced additionally in a plain English format and made widely available to the public, in printed form and electronically. **[paragraph 3.89]**

9.3 We recommend that the guidance be kept under review by the Family Justice Council and updated regularly. **[paragraph 3.90]**

At the recent Executive Committee meeting, it was suggested that given the specialist nature of this task it would seem sensible to approach members who served on the Council's former Money and Property Committee. The President would like this group to be chaired by a High Court Judge, to start work as soon as possible. The formal letter inviting the Council to complete this work is expected shortly. Work is underway to draw up a list of working group members for the President's approval. Members will be kept informed of developments.

11. Advicenow guides for LiPs - update

The President has expressed a wish to provide a written endorsement to the financial guide, but would like Mr. Justice Mostyn and Mr. Justice Cobb to give final consideration to the guide. Once this is completed, the guide will be published. It will also form part of the MoJ landing page for online materials to assist litigants-in-person. Members were invited to assist with the circulation of the final guide once completed, either through their own organisation's networks or other means.

12. Private Law CAP - update

Mr. Justice Cobb prepared a written update on the Child Arrangements Programme and associated guidance. Members expressed their gratitude for a full update. Members also gave their approval for the Executive Committee to consider and approve the final guide to mediation for Judges, once completed. In the absence of lawyers, members questioned who would have responsibility for completing the CAP forms. Alex agreed to seek clarification.

13. The Family Justice Young People's Board – overview

Sophia Fraser and Rebecca Manning gave a short presentation on the work of the FJYPB, with copies of their presentation circulated to members ahead of the meeting. Members discussed the current FJYPB workstrands including developing a glossary of terms for children and young people, and the promotion and implementation of a National Charter. There is a Voice of the Child conference on the 24th July, with an address from the President. Sue Berelowitz would like the Charter to be linked to the new OCC website, once updated. It was suggested that a member of the FJYPB should be invited to attend the next meeting, as Transparency will be on the agenda. Members thanked Sophia and Rebecca for their presentation and attendance.

14. Any other business

Open meeting: Members were reminded that the next Council meeting will be an open meeting, which will be held at Clive House.

Adoption Consultation: Bridget Lindley would like to circulate the FRG response to members for information, in the event that any members should wish to submit a response on behalf of the Council. This consultation closed on Friday last week.

Bridget renewed her concerns over the lack of a voice for parents and carers on the FJB. She urged members to give this further consideration.

Dispute Resolution (out of court) sub group: Fiona Green gave an update on the proposals for continuing the work of this group. The DRS sub group was a multi disciplinary group of academics, judiciary, voluntary sector, and public sector and government officials. It was set up following a recommendation from the Family Justice Review. The group produced a Parenting Plan, which included examples of issues upon which parents would need to agree, in order to parent their child separately. Parents record their decisions or what they have 'reality tested'. A practitioner using the plan would need to carry out some initial screening. There are many forms of initial screening throughout the system. The group researched what was already available and chose the Australian model DOORS (Detection of overall risk screening). There is practitioner guidance available with the aim of assisting the parents to answer the main questions on page 7 of the parenting plan in the yellow box. This allows the parents to passport information from one service to another. The Family Mediation Council has agreed that this will form part of the MIAM training delivered to all practitioners to ensure consistency in initial screening.

Fiona has produced a summary sheet (2 sides) which would accompany the C100 where the parents need to apply to court. This gives a summary of what they have done to date and

condenses the issues for the judge. This will help the parents to be better prepared litigants-in-person. The pathway for out of court DRS will hopefully as a minimum be MIAM, SPIP and some One-Plus-One work which is called 'Getting it right for children'.

Members agreed that the group continue its work and dovetail into Mr Justice Cobb private law CAP work.