



Family Justice Council

Minutes of the Council Meeting 17 July 2017, Royal Courts of Justice

Present:

Sir James Munby, Chair
Christina Blacklaws, Private Law Solicitor
Alex Clark, Secretary to the Council
Stephen Cobb, High Court Judge
Rebecca Cobbin – HMCTS
Elizabeth Gibby, Ministry of Justice
Andrew Greensmith, District Judge
Rosemary Hunter, Academic
Sara McIlroy, Parents and Families
Helen Morris, Family Magistrate (by phone)
Jane Probyn, Circuit Judge
Malek Wan Daud, Barrister
Paula Adshead, Assistant Secretary to the Council
Daphna Wilson, Secretariat

Apologies:

Melanie Carew, Cafcass
Jaime Craig, Child Mental Health Specialist
Maud Davis, Public Law Solicitor
David Duffett, Department for Education
Sally Holland, Office of the Children's Commissioner
Elizabeth Isaacs, Silk
Alison Kemp, Paediatrician
Matthew Pinnell, Cafcass Cymru
Dominic Raeside, Family Mediator
Stuart Smith, Justices' Clerk
Natasha Watson, Public Law Solicitor

1. Announcements

The chair welcomed Rebecca Cobbin as the new HMCTS representative.

The recruitment campaign to appoint a new Assistant Director of Children's Services to member had now concluded. The President had agreed to the selection panel's

recommendation to appoint two candidates to the post. Both candidates would bring different skills and experience to the work of the Council and, together, would provide excellent representation of a key stakeholder in the family justice system.

2. Minutes of last meeting and matters arising

The minutes were approved.

Matters arising

Enforcement of Family Financial Orders:

Following the appointment of a new Minister for family justice, the President had written on behalf of the Council to convey its support for the Law Commission's proposals.

Keeping in touch with Brexit developments and their impact on family law:

The International Family Law Committee was seeking further information about how the Council wished to be kept up-to-date on developments. The Secretariat would be responding shortly.

Family Drug and Alcohol Court (FDAC):

The timing of the General Election had delayed DfE advice to Ministers regarding future funding for the FDAC National Unit. Advice on whether to provide funding beyond the end of the current financial year would now be submitted to Ministers in late summer/early autumn 2017. The Chair expressed his hope that funding would continue.

Capacity to litigate guidance:

Malek Wan Daud had made further amendments to the document which was now with HHJ Raeside for her consideration. It was expected to be ready for publication shortly.

Vulnerable witnesses and children:

Following consultation, the Practice Direction on vulnerable witnesses had been redrafted and the final version approved by the Family Procedure Rules Committee (FPRC). It was now awaiting Ministerial approval and was expected to be implemented in October.

The Practice Direction regarding children would be discussed at the next FPRC meeting in October.

Cross-examination of expert witnesses by litigants in person:

Jaime Craig was liaising with the British Psychological Society and the Royal College of Psychiatrists to produce a paper for the Council's consideration. The Chair would be interested to know the extent of the problem and what was being proposed to address it.

3. Business Plan update

Activity 1: Paediatric expert evidence

The working group expected to finalise the draft guidance in time for the next Council meeting. If completed earlier, it would be submitted to the Executive Committee and circulated to Council members for approval out of committee. The final document would be published on the Council's webpages and the Royal College of Paediatrics and Child Health website.

Activity 2: Work with LFJBs to promote training with regard to the practice directions on children and vulnerable witnesses

It was agreed that a short video would be the most effective method to promote awareness and understanding of Practice Direction 3AA (vulnerable witnesses). Consideration should also be given to incorporating training on Practice Direction 12J which, having been approved by the Family Procedure Rules Committee, was awaiting the final version for Ministerial sign off. It was hoped that the Judicial College would agree to collaborate on the initiative and help share the cost. The Chair would raise the issue with HHJ Heaton.

Although the video would be primarily for the judiciary, including magistrates, it should also prove helpful for magistrates, court staff and practitioners. LFJBs should be encouraged to promote the video and the information would also be made available on the Council's webpages.

Helen Morris suggested that the Magistrates' Association (MA) could help cascade the information. The Chair would raise the issue with the MA.

The Chair requested that an action plan be submitted to the Executive Committee for consideration before being put to the Council for approval in October.

Activity 3: Lessons from research for the judiciary

The University of Sheffield would be conducting telephone interviews with a small number of judges to determine how and to what extent they make use of research material. The interviews would take place over the summer with a view to collating the information by September.

Activity 4: Support for litigants in person

The Secretariat had recently met colleagues at the Civil Justice Council to discuss some of the initiatives being taken to improve support for litigants in person. These included:

- The LiP Engagement Group – a cross jurisdictional group including HMCTS, the advice sector and Advicenow. It has a number of working groups which look at particular aspects of going to court such as the type of language used in proceedings.
- LiP Liaison Judges – an initiative which encourages each court to have a dedicated LiP Liaison Judge. The Secretariat would be looking at the extent to which these cover family LiPs.
- LiP Network – a website enabling professionals to share experience and expertise.

- Bundles – an initiative in which HMCTS staff in the Clerk of the Rules’ office prepare bundles on behalf of litigants in person. The Chair commended the practice saying that although resource intensive, it had worked well so far. A similar practice was in place in Bristol. It was suggested that the initiative might be replicated in other courts to help reduce the inconsistencies of approach with regards to LiPs. Sara McIlroy informed members that various parent and family groups felt that it would be useful to have a template or standard list of what should be included in a bundle.

Christina Blacklaws spoke about Public Legal Education, a group set up by the Solicitor General with regards to LiPs issues. She added that the Law Society was working with agencies to consider what was necessary to support better understanding of the law. It would be helpful to keep in touch with developments. She also highlighted a recent initiative by Richard Susskind – the ‘Online Court Hackathon’ – which invited participants to design tools to assist online court processes.

Sara McIlroy informed the Council that Only Dads and Only Mums were now self-funded by their Family Law Panel and were able to provide online materials for LiPs. Their campaign for 2018 would focus on court delays in private law cases.

Activity 5: Judgecraft in relation to litigants in person

Rosemary Hunter informed members that her proposal had been positively received by the Judicial College although they had further questions. It was suggested that the President might wish to discuss this at a senior level as the College’s expertise and resources would be invaluable. It was hoped that the four vignettes would be finalised by the end of the year and the videos ready for publication in 2018.

Activity 6: Child protection mediation – pilot scheme

Andrew Greensmith explained that given the time constraints, the working group had not been able to submit a funding bid to the Nuffield Foundation as previously hoped. It had agreed instead to approach the Family Rights Group (FRG) to discuss the potential for incorporating this area of work into the sector-led review on public law. A paper had been prepared to help inform the discussion.

Activity 7: Exceptional case funding

Rosemary Hunter informed the Council that applications for exceptional case funding had fallen dramatically – from 819 applications in 2013/14 to 303 in 2016/17, of which only 32% were successful. She added that she would be providing specialist family law input to the Public Law Project’s research into the reasons for this, and also to its ‘How to....’ guidance. She would also keep in touch with its work with the Rights of Women on making applications on behalf of women who were victims of domestic and sexual violence in immigration and family cases.

4. Pension Advisory Group

Alex Clark spoke of a new judicial-led working group which had been set up under the aegis of the Family Justice Council. The Pension Advisory Group, chaired by Mr Justice Francis and HHJ Edward Hess, would be conducting an interdisciplinary review of how pensions are treated on divorce and will seek to tackle inconsistencies in the way in which judges and

practitioners approach pension-sharing on divorce. Its composition included members of the former Financial Needs Working Group as well as Rosemary Hunter and Dominic Raeside. The group had secured funding from the Nuffield Foundation to produce guidance for the judiciary and practitioners but it was hoped that a separate guide could be provided for litigants in person. It was agreed that the Council should look to fund this.

5. Debate topics

The Council noted that this year's debate would take place on Tuesday 21 November in central London. Members discussed the potential topics put forward by the Executive Committee but ultimately agreed that the debate should focus on legal disputes involving the serious medical treatment of children and whether it was appropriate for the court, rather than the parents, to decide the best interests of the child. The working title would be:

'Parental autonomy and a child's best interests: should the court have the final say?'

It was suggested that the panel might include a parent, a medical professional and an academic and members were asked to submit suggestions to the Secretariat. Given the time constraints, members agreed to make the final decision out of committee.

6. Bridget Lindley Lecture

The second in the series of Bridget Lindley Memorial Lectures would take place in March 2018. The location was likely to be Birmingham pending the family's agreement. (NB: It has subsequently been confirmed as Tuesday 13 March in Birmingham).

Members agreed that the lecture should look at issues around the impact of social media and technology on proceedings, particularly in terms of transparency and confidentiality. Ideally the speaker would be from outside the family justice system, such as an academic or journalist, to provide a wider perspective. Suggested names included Richard Moorhead, Deborah Orr, Louise Tickle and Matthew Parris.

7. Any other business

Helen Morris informed the Council that HMCTS was introducing direct recruitment to the family Panel to address the shortage of family magistrates. The scheme would be trialled in London, Manchester and Birmingham.

Helen also commented on the replacement of local Benches by a national Bench, suggesting that this might require a review of the family magistracy hierarchy and governance. The President indicated that he would discuss this with the Magistrates Association later that week.

Sara McIlroy raised concerns about how First Hearing and Dispute Resolution Appointments (FHDRA) were operating. Parent and family groups had indicated that hearings did not allow sufficient time to settle and that delays in listing further hearings only compounded the problem. There was a feeling that the system was causing further entrenchment between parents. It was noted that the Child Arrangements Programme (CAP) does not indicate the length of time to be allocated to a FHDRA. However, members felt that most cases would settle if allocated a minimum of one hour.

The Council agreed to consider the issues further. It would be useful to look at statistics

from around the country and to consider the advantages of back to back listings which had successfully increased the throughput and quality of FHDRA's in Luton. Jane Probyn, Sara McIlroy and Andrew Greensmith would draft an action plan for consideration at the next meeting.