



**Family Justice Council  
Minutes of the meeting held on 20th January 2014  
Royal Courts of Justice, London**

**Present:**

**The Honourable Mrs. Justice Pauffley (chair)**  
**Mark Andrews, Justices' Clerk**  
**Professor Anne Barlow, Academic**  
**Christina Blacklaws, Private Law Solicitor**  
**Alex Clark, Secretary to the Council**  
**The Honourable Mr. Justice Cobb**  
**Martyn Cook, Family Magistrate**  
**Lynette Evans, CAF/CASS Cymru**  
**Tessa Fyffe, Assistant Secretary to the Council**  
**District Judge Liza Gordon-Saker**  
**Fiona Green, Cafcass**  
**Angela Joyce, DfE**  
**Bridget Lindley, Consumer Focus, Parent Representative**  
**Caroline Little, Public Law Solicitor**  
**Her Honour Judge Katharine Marshall**  
**Joe Murphy, MoJ**  
**Dr. Heather Payne, Consultant Paediatrician**  
**Dominic Raeside, Family Mediator**  
**Andrew Shaw, President's Office**  
**Malek Wan Daud, Family Barrister**  
**Karen Wheller, International Family Justice Office/FJC Secretariat**  
**Daphna Wilson, Family Justice Council Secretariat**

**1. Announcements and Apologies:**

**Sue Berelowitz, Deputy Children's Commissioner for England**  
**John Daly, Assistant Director Children's Services**  
**Alistair Davey, Welsh Government**  
**Rhian Davies, CAF/CASS Cymru**  
**Dr. Elizabeth Gillett, Clinical Psychologist**  
**John Hall, MoJ**  
**Paul Harris, HMCTS**  
**The Right Honourable Sir James Munby, President of the Family Division (chairman)**

Mrs. Justice Pauffley welcomed the members and introduced herself as the new Deputy Chair of the Council. As such she will chair future Council meetings as and when required to do so by the President.

Alison Russell QC has recently been appointed to the High Court bench. Mrs. Justice Russell has agreed to contribute to the conference on the 7<sup>th</sup> February. Mrs. Justice Pauffley outlined a brief summary of her

main contributions to the FJC:

Alison Russell QC has been the senior barrister member of the Family Justice Council (FJC) since October 2009, serving as a member and later Chair of the Executive Committee and Chair of the Domestic Abuse Committee. She has been an active member and regular contributor to the Public Law and the Experts Committees. She was the lead member in the planning and co-ordination of the programme at the successful FJC Interdisciplinary Conference held at Dartington in October 2011, in response to the Norgrove review of the Family Justice System. As Chair of the Executive Committee, she was the lead member in the FJC's work with Lord Justice Ryder in the Modernisation agenda and represented the FJC on the Judicial Working Group on Litigants-in-person in July 2013. She has been a strong ambassador for the FJC and has contributed to a number of publications including guidance on child witnesses, a protocol for service of non-molestation orders and guidance on the disclosure of medical records and the use of overseas experts in family proceedings.

All members joined the Chair in extending their gratitude to Mrs. Justice Russell for her contribution to the Council and wished her success in her new appointment.

It follows that the secretariat will have to launch a public appointments campaign, in conjunction with the MoJ public appointments team, to fill the position of Family Silk member on the Council. It is anticipated that the campaign will also include positions of the Consumer focus/Parent's representative and Magistrate members, to take over from Bridget Lindley and Martyn Cook. The secretariat will start discussions with MoJ after the conclusion of the conference in February.

## **2. Minutes of the last meeting and matters arising**

The minutes were approved without amendment.

### **Matters arising**

**DJ Crichton:** District Judge Crichton has expressed his gratitude for the card and gift received. The gift was a contribution of £335 to his chosen charity, African Community Outreach project in South Africa, which provides a home and shelter for immensely disadvantaged children.

**Risk-assessments item 11:** this item will be addressed at the next meeting due to a full agenda with more pressing FJC priorities

**Paper on Experts Pilot Project in Wales (item 12):** Alex Clark approached MoJ officials and after discussion, has been invited to submit a paper on the need to develop LFJB multidisciplinary education and training subgroups for the FJB.

**Action 1: Alex Clark to write a paper for the FJB on the** development of LFJB multidisciplinary education and training subgroups

Christina Blacklaws confirmed that the response to the Law Commission consultation on the grounds and process of no-fault divorce was submitted.

**Enforcement of Maintenance Orders item 14:** John Hall has circulated a note clarifying the position of maintenance orders in the Single Family Court (SFC)

## **3. Debate 2013: feedback and forward planning**

This is the first Council meeting since the annual FJC Debate held on 5<sup>th</sup> November 2013, entitled 'Is Mediation fit for purpose?' It was a successful event and members were invited to give their feedback. It was noted that the debate format is successful and it was an opportunity to showcase two of the newly appointed Council members. Some members expressed concern that the layout of the venue, coupled with the large numbers in the audience, made the room 'too full'. Perhaps a larger venue should be considered next time. Alternative venues suggested included the lecture facility at King's College and

Friends' House in Euston. As the secretariat secures a venue through Calders, an enquiry into the availability of these venues will be made. Members were invited to submit ideas for a topic for this year's debate, which will hopefully be in November or December 2014. One suggestion received so far is female genital mutilation.

#### **4. Conference 7 February 2014 – final update**

This 'near final' draft has been circulated for members' information only. The speakers have all confirmed and the maximum capacity at the venue of 100 people has more or less been filled. There is an ever-growing reserve list. Those members, who have not responded to Karen Wheller's email, requesting confirmation of their attendance, are invited to do so as soon as possible. Jordan's publishers are planning to publish the final papers from the conference in a special edition of Family Law later in the year. Alex Clark is in discussion with Jordan's about publication in May 2014. Professor Anne Barlow has been working very closely with Tessa Fyffe, and the secretariat is very grateful for her guidance, help and assistance.

Members discussed the use of the term 'Alternative dispute resolution' in session 2, as a number of responses to the consultation of the draft Child Arrangements Programme (CAP), questioned its use and effectiveness. After discussing a number of options, members decided to keep the reference to 'ADR'.

#### **5. Triennial Review - update**

Stage one of the Triennial review of the FJC is now complete. The draft stage one report has been signed off by the President, and is now with MoJ officials and the Cabinet Office. It is hoped that, subject to any proposed amendments to the report, a written ministerial statement will be laid in Parliament, enabling the review team to move onto stage two. This will address governance and efficiency.

#### **6. Transparency - update**

The practice guidance on Transparency in both the family court and the Court of Protection was published by the President on the 16<sup>th</sup> January. The guidance will take effect from 3<sup>rd</sup> February. This will be an incremental process. Stage 2 will look at what documents can be disclosed to the media. Alex Clark will keep the Council informed of developments. The timing of Stage 2 had yet to be determined and it would be necessary to allow the changes made in Stage 1 to bed in and to gauge their impact before moving onto stage 2. In terms of financing the publication of judgments, it was mentioned that the previous family Minister Lord McNally wrote to the President explaining when in the public interest, the publication of a judgment is funded by HMCTS. There is a time element that has not been costed. If using the DARTS system, it can take a long time to burn the CD, also the judge will have to check it. This all takes up considerable time. Members asked questions about proposals to monitor and review the impact of the practice guidance, not just on cost, but also on the effectiveness of the anonymisation of published judgements particularly in regard to protecting the privacy of children. Members asked for enquiries to be made of the OCC.

The Chair noted that there would be ample time for the President to involve the judiciary as this develops. The Chair encourages anonymising judgements to be a collaborative process between the legal representatives and the judge. Members expressed concern about whether the LAA would underwrite the cost for parents post-decision. Members agreed that this item should remain on the agenda.

#### **7. Pre-proceedings Protocol; DfE Vol. 1 guidance - updates**

Angela Joyce, the DfE lead on this area, was in attendance. She explained that there has been an intensive process in producing the draft with the expert group. It is hoped that the consultation will be published

in February, with final guidance published before Easter. DfE officials are working with Andrew Webb (ADCS) and Anthony Douglas (Cafcass), to develop an annex document which is intended to be used nationally by social workers for care applications.. With regards to the request for FJC input on the draft, HHJ Marshall observed that it was not practical to expect comments from the judiciary between 20 December 2013 and 7 January 2014, as this was a period when judges are required to take annual leave. Careful thought is required on how to take this guidance forward as judges are just beginning to see some of the pre-proceedings cases coming into court. Angela Joyce apologised for the tight deadline, which was due to time constraints. Members will have an opportunity to provide feedback during the consultation period, and in the written evidence in response to the new inquiry on the impact of LASPO. Joe Murphy confirmed that Simon Hughes has taken over from Lord McNally as the new minister for family justice. Alex Clark noted that he would add this item to the agenda when the President meets with Simon Hughes.

## **8. Protected Parties' guidance - update**

The MoJ/FJB invited the Council to update its 2010 guidance on 'Parents who lack capacity' in light of the revised PLO and 26 week considerations. Malek Wan Daud is leading on this work with Helen Clift at the Office of the OS. Malek has circulated a paper and invited comments from members which he would ideally like within the next couple of weeks. He believes that he has taken this work as far as possible and would like a steer from the President as to next steps and timing. How would this guidance sit with the forthcoming new rules for the SFC? HHJ Marshall noted that this guidance could be out of date by the time the SFC starts, and therefore publication should be either before or after the SFC. Malek Wan Daud would be open to redrafting the guidance in light of the changes that come in from the single Family Court. Malek noted he would like to see an updated version of the rules of court, even if this was just in draft.. Mr. Justice Cobb observed that the responses to the CAP consultation did not include any solutions to the question of capacity in private law proceedings. Could the Council not hold back on this guidance until the private law CAP has been finalised? The Chair and other members endorsed this proposal that a single document which dealt with capacity in both public and private law would be more worthwhile. Alex Clark agreed to take these comments back to the President for his guidance.

## **9. Interpreters – final update**

Malek Wan Daud has been liaising with HMCTS to improve the quality and supply of interpreters in family proceedings and circulated a final paper. As far as HMCTS is concerned, the difficulties with interpreters have been resolved. This problem was referred to the FJC by the local FJCs prior to the new unified contract for interpreters. However it would be helpful to know if the local FJBs have an alternative view about this. Joe Murphy offered to raise this with the LFJBs through Paula Adshead at MoJ.

## **10. Advicenow guides for LiPs - update**

Clare Shirtcliff from Advicenow has produced a draft guide to financial orders for litigants-in-person (LiPs). Clare was also awaiting the conclusion of Mr. Justice Mostyn's standardised family orders project, to include a standard order template in the guide, however she has now been advised that it would be better to include an existing standard order template, with the caveat that this may change in the future. Members have been invited to send in any comments for Advicenow via the FJC Secretariat. A very helpful response has been received from DJ Liza Gordon-Saker.

Some members thought that the guide was too long, however it was noted that the material itself was of a high standard. Bridget Lindley compared this guide to others produced by FRG and thought the length was necessary as there needs to be detailed material and references in the guide. Some members were of the view that the guide may not assist all levels of LiPs suggesting there may be an argument for two pieces of work. Perhaps an introductory basic guide for those LiPs who would struggle to understand, and this one. Members asked whether there were plans to make an accompanying video, and highlighted the Norgrove review recommendations for online and hardcopy materials. Professor Anne Barlow thought the guide was very good, but questioned whether it was missing the target audience, as some

people may be baffled by it. HHJ Marshall thought the document was excellent, and would like to see similar guides on all the range of applications. Tessa Fyffe informed members that Advicenow have a list of proposed guides that they would be willing to produce, and it is hoped that the MoJ can provide the necessary funding. Advicenow have asked to meet with Alex Clark to discuss these plans. Mr. Justice Cobb informed members that he and the working group members made recommendations in the CAP for Advicenow to produce some guides for LiPs. Joe Murphy invited Alex Clark to meet with him to discuss further funding for additional guides. Jo also mentioned he was due to meet shortly with the MoJ Comms team to discuss ways in which key existing and upcoming materials can be clearly published and accessed to members of the public. Members asked for this item to be added to the agenda for the next Council meeting.

#### **11. Experts - update**

The final version of 'The Standards for Expert Witnesses in the Family Courts in England and Wales' was launched at a Bond Solon conference in November. There is an increased awareness of the importance of improved letters of instruction.

The work on standards with the BPS will be back on track next month due to a delay caused by illness and other circumstances.

#### **12. NHS Multidisciplinary expert witness teams**

The Council received a letter from the NHS team at Great Ormond Street Hospital about the cuts in fees for expert witnesses. Dr. Heather Payne has worked with the Royal College of Paediatrics and Child Health, and identified that the fee cuts are leading to the closure of a number of NHS teams. She would like to take this forward with the Experts' working group. Caroline Little is prepared to assist as the funding issue is crucial because it creates the problem of finding the right expert. GOSH is one of the last facilities to remain open. Three facilities have closed in the last year. Dr. Payne noted that the working group would start by clarifying what exactly is delivered by a multidisciplinary team. However the Coventry University research commissioned by the MoJ, with results due in the autumn of 2014, is eagerly awaited, and may help to address the problem. Joe Murphy invited members to contact him, should they require the reference for this work.

The Chair invited Dr. Payne to take the lead on drafting a response to GOSH on behalf of the FJC.

Joe Murphy is also working on the area of experts in private law. He invited members to provide evidence of instances where delays have been caused due to an expert issue. Members commented that such evidence is often anecdotal. HHJ Marshall suggested that judges could be invited to complete a form in each private law case where an issue arises over experts, and perhaps local FJBs could be involved in a similar monitoring exercise in their local areas over a number of months. Christina Blacklaws asked about a tracking system that would provide objective factual information to inform the work of the Council, for example, the number of LiPs in private law cases with and without a lawyer. It was thought that this information is probably in existence in a number of different sources, but it would need to be pulled together into one resource. Joe Murphy and Fiona Green would be interested in having a more detailed discussion with Alex Clark, after he has obtained the President's views. Members would like this item to be added to the agenda for the next Council meeting.

#### **13. Court fees consultation – deadline 21 January**

Malek Wan Daud and Caroline Little circulated the current draft to members for comment. Caroline Little noted that the fee to be paid by a LiP for restoring a matter to court has increased to £250 approximately. HHJ Marshall has a local arrangement in place for such applications which allows judges to assess whether there is a need for a hearing, before court staff take the payment.

#### **Any other business:**

#### **Justice Committee enquiry on the impact of changes to civil legal aid under the Legal Aid, Sentencing and Punishment of Offenders Act 2012**

Alex Clark informed members that the President would like the Council to respond to this as this proved an ideal opportunity for the Council to raise many of the issues regularly addressed. Members were invited to volunteer to lead on this response on behalf of the Council. Members discussed how best to capture evidence for the response, other than anecdotal evidence. Suggestions included the use of case studies, pointing to research that should be commissioned and the forthcoming research on LiPs by Professor Liz Trinder as well as potentially drawing on the papers that will be presented at the FJC conference. As fewer people are accessing mediation, this will need to be addressed in the response.

**Update on CAP consultation:** Mr. Justice Cobb hopes to send the revised Allocation and Gatekeeping Guidance to the President in the next two weeks, and the revised CAP thereafter, in time for the FPRC to consider it at their March meeting