



Family Justice Council
Minutes of the full Council meeting held on 25th April 2016 in
Conference Room 2M, Queens Building, Royal Courts of Justice

Present:

Christina Blacklaws, Private Law Solicitor (Acting Chair)
Melanie Carew, Cafcass
Alex Clark, Secretary to the Council
Elizabeth Gibby, MoJ
Andrew Greensmith, District Judge
Elizabeth Isaacs QC
Sara McIlroy, Parents and Families
Helen Morris, Family Magistrate
Matthew Pinnell, Cafcass Cymru
Jane Probyn, Circuit Judge
Dominic Raeside, Family Mediator
Graham Ritchie, Office of the Children's Commissioner
Kevin Woods, DfE
Paula Adshead, Assistant Secretary to the Council
Daphna Wilson, Secretariat

Apologies:

Mrs Justice Pauffley, Chair
The Honourable Mr. Justice Cobb
Malek Wan Daud, Family Barrister

1. Announcements

The Council was sorry to learn that Angela Joyce, DfE had left the Council having retired from the DfE. Angela was thanked for the significant contribution she made to the Council and wished all the best for the future. Kevin Woods was welcomed as the new DfE representative.

Members also thanked Jenny Clifton for her contribution as the representative of the Office of the Children's Commissioner, and was wished her every success in her new role. Graham Ritchie was attending as a representative of the OCC.

2. Minutes of the last meeting and matters arising

The minutes from the last meeting were approved.

Matters arising:

'Sorting out Finances on Divorce' guidance for litigants in person: Publication of the guidance had been postponed whilst the issues around Form E were resolved. It was finally launched on 5 April by way of a press release and social media, and made available on the FJC web pages.

Financial needs guidance for the judiciary and courts: The guidance for the judiciary, courts and legal advisers was almost ready for publication. Funding had been secured to provide 500 copies in the form of a printed A4 booklet for the family judiciary.

Joint FJC/British Psychological Society (BPS) standards for psychologists: The BPS was expected to launch the guidance very shortly. Arrangements were being made for its publication on the FJC website.

No fault divorce: The Second Reading of the Private Members' Bill, *No Fault Divorce*, had been deferred to 13 May. The Council would monitor Government interest and consider the implications for Activity 7 on this year's Business Plan.

There were no other matters arising that are not agenda items.

3. Bridget Lindley memorial

Members learned with sadness of the untimely death of Bridget Lindley, the former Parents and Families representative. A letter of condolence had been sent by the President on behalf of the Council. Members were fully supportive of a proposal to host an annual lecture in Bridget's memory. It was hoped that other organisations closely related to Bridget's work, such as the Family Rights Group and Cambridge University, would wish to support this initiative. Consideration would be given to the purpose of the event, potential subject areas and speakers.

Liz Isaacs agreed to help with the organisation of the first lecture which would take place in March 2017.

4. Business Plan 2016-17

The updated Business Plan was circulated for the Council's approval.

Concerns were raised about the wording in Activity 5 (Improve support for litigants in person) which gave the impression that a two-tier system was desirable. The aim was to

make the current system more accessible to LiPs. There were limits to what the Council could do but it was in a key position to explore the issues and provide advice to the Family Justice Board. It was agreed to divide the work into two main activities:

1. To improve support for litigants in person, incorporating:
 - Consider the accreditation and regulation of McKenzie Friends
 - Support the development of online advice and dispute resolution
 - Feed into HMCTS work on digitisation and provide feedback on user experience
2. To advise the Family Justice Board about changes needed to make the current system more accessible to litigants in person.

Liz Isaacs raised the issue of lengthy immigration processes and the pressure on local authorities to provide support under Section 17. An information-sharing protocol already existed between the Family Court and the Immigration Tribunal (<https://www.judiciary.gov.uk/wp-content/uploads/2013/03/protocol-communications-between-family-court-and-immigration-asylum-tribunals.pdf>). However, it was suggested that more was needed to link relevant bodies including the Home Office, NHS and DWP. The Council would consider exploring the issue and the potential for new guidance or practice direction.

Jane Probyn suggested looking at the provision of FDAC across the country and the potential for expanding into private law. Andrew Greensmith felt there was value in exploring the merits of linking FDAC and PAUSE. Alex Clark informed members that there was activity on this elsewhere, including work already in hand between the FDAC National Unit and the President. Kevin Woods confirmed that funding for the FDAC National Unit had been agreed for another year. It was hoped that a robust evaluation of the scheme would encourage other areas to get involved and perhaps seek funding from elsewhere, not just local authorities.

The final Business Plan would be submitted to the June (date tbc) meeting of the Family Justice Board for approval. Christina Blacklaws and Sara McIlroy volunteered to attend.

5. Joint criminal justice and child protection processes

Graham Ritchie spoke about the work of the Office of the Children's Commissioner to examine the court process as it applies to child victims of sexual abuse. The first part of its assessment focused on the criminal process, a report of which can be found at: (<http://www.childrenscommissioner.gov.uk/sites/default/files/publications/Protecting%20children%20from%20harm%20-%20full%20report.pdf>).

Work had now begun to explore the joint criminal/family investigation process and identify ways in which it could be optimised to ensure that the best possible evidence is made available to the courts. A selection of relevant cases would be analysed and a parents' focus group set up. Early indications showed that as investigations proceed, the processes begin to

diverge; families found it difficult when aspects of the criminal investigation were replayed in the family court; and further difficulties arose when there was no criminal conviction.

Members discussed the difficulties of getting the police to disclose information in a timely fashion and the need to move towards a system in which the child is interviewed only once. Although the ABE process was good, there were concerns that not all involved had the relevant training.

Graham explained that the work was currently in the scoping phase. The fieldwork and case analysis would take place in June and July, culminating with a report to be published in the autumn. A list of written questions would be sent to the Council for its consideration and discussion at the next meeting.

6. Consultation: McKenzie Friends

A draft response to the consultation on 'Reforming the Courts' Approach to McKenzie Friends' was circulated for comments.

Members agreed that as the term 'McKenzie Friend' was now well established and could easily be explained to litigants in person, it should remain in place. The issue of remuneration was also discussed, amid concerns that some McKenzie Friends were marketing themselves as 'professional' and seeking payment for their services despite having no legal qualifications. Members agreed that a prohibition on remuneration would help protect litigants in person. Members also felt the more could be done by recently qualified lawyers and paralegals to offer more affordable services to LiPs. It was better to provide support from qualified legal professionals than allow the unqualified and unregulated to charge fees. It was further agreed that rather than introduce a new rule of court, the existing Practice Guidance should be simplified and made readily available to LiPs.

The consultation response would be amended to reflect discussions and circulated to members for final comment.

7. Lessons from research for the judiciary in public law – report and proposals

The Social Work Academic Working Group had completed its scoping exercise to consider the options identified by the FJC for taking forward the Masson report. Professor Kate Morris presented a paper setting out the group's findings and proposals.

They found that there were already multiple existing arrangements in place to support the dissemination of research findings but use by the judiciary was limited and there was very little quality assurance. They had struggled to find a coherent picture of purpose and audience across the existing arrangements. There were concerns over the expectation that the judiciary should be experts in research and about the assumption that research settles matters definitively. It was suggested that the Nuffield Observatory plans may address some of these issues and it was recommended that the Council remain closely involved in their work.

Having considered the four models put forward by the Council, the working group proposed a hybrid model drawing together various elements of the models. It also recommended that the Council seek funding to a) conduct a review of existing mechanisms which would also feed into a guide for the judiciary and b) pilot a short series of learning events to explore judicial engagement with research. A bid for funding had been submitted to Nuffield and it was agreed to await the outcome before taking a paper to the Family Justice Board. It was noted that any plans must address the whole judiciary including magistrates and be relevant to Wales.

Kevin Woods informed the Council that the DfE had secured funding for its own project to develop a digest and training for the judiciary and local authorities on adoption. A separate meeting would be held to discuss how this might progress.

8. Consultation: Magistracy – proposal to abolish the family panel

Helen Morris had drafted a response on behalf of the Council to the consultation on changes to the Rules relating to the organisation of the magistracy.

The Council agreed with the arguments set out in the response, particularly the continuing need for the family panel, and approved it for submission.

9. Conference

The Council's conference on support for litigants in person would take place on 24 October in Birmingham. Sara McIlroy and Malek Wan Daud had formulated a programme for the Council's consideration.

Members were content with the overall plan and a number of suggestions were made regarding speakers including Richard Susskind, a litigant in person and a Cafcass member with operational experience. It was further suggested that questions for the panel should be submitted on the day and that it be made clear when advertising that the event would focus only on private law.

Sara McIlroy would take forward these proposals once the President had given his approval to the programme and speakers.

10. Support for litigants in person – next steps

It was acknowledged that although the Council's paper had been welcomed by the Family Justice Board, there had been little progress. The recommendation of a stand alone website had not been taken up but members agreed that they could do more to promote the Advicenow website and work with other groups to promote online support for LiPs. The idea of a ministerial champion had yet to be put to ministers and the Council would continue to push for it.

11. Debate topics

Members were asked to consider potential themes for the annual debate which would take place in London on 1 December. Suggestions included co-habitation and the myth of common law marriage; civil partnerships for heterosexual couples; settlement conferences; and pre-issue mediation for parents and local authorities in public law. Alternatively, an area from the Business Plan, such as the regulation of McKenzie Friends, should be considered.

12. Any other business

Daphna Wilson informed the Council that the Open Meeting would be held on 11 July. The event had been advertised and a good number of applications had been received. Attendees would be selected to ensure a diverse audience. Their questions would then be circulated to members for consideration before the meeting to allow responses to be formulated.

**Next Family Justice Council (Open) Meeting:
Monday 11 July at 10am**