



Family Justice Council

Minutes of the Council Meeting 10 April 2017, Royal Courts of Justice

Present:

Sir James Munby, Chair
Melanie Carew, Cafcass
Angela Carpenter, HMCTS
Alex Clark, Secretary to the Council
Jaime Craig, Child Mental Health Specialist
Maud Davis, Public Law Solicitor
Elizabeth Gibby, Ministry of Justice
Andrew Greensmith, District Judge
Professor Rosemary Hunter, Academic
Alison Kemp, Paediatrician
Helen Morris, Family Magistrate
Dominic Raeside, Family Mediator
Stuart Smith, Justices' Clerk
David Duffett, Department for Education
Jane Probyn, Circuit Judge
Sara McIlroy, Parents and Families
Matthew Pinnell, Cafcass Cymru

Guest – Judith Masson, Academic

Paula Adshead, Assistant Secretary to the Council
Daphna Wilson, Secretariat

Apologies:

Malek Wan Daud, Barrister
Mrs Justice Pauffley, Deputy Chair
Christina Blacklaws, Private Law Solicitor
Sally Holland, Office of the Children's Commissioner
Mr Justice Cobb, High Court Judge
Elizabeth Isaacs QC, Silk
Natasha Watson, Public Law Solicitor

1. Announcements

The Chair announced that Mrs Justice Pauffley would be retiring before the next meeting in July. He marked the occasion by thanking her for chairing not only the Council meetings but

also its Executive Committee meetings and a number of other events. Her style of chairmanship had been admirable and the Council had benefited greatly from her knowledge of family justice. She was wished a long and very happy retirement.

2. Minutes of last meeting and matters arising

The minutes were approved.

Matters arising

NSPCC: Sara McIlroy informed the Council that the NSPCC would be happy to attend a future meeting to talk about LIFT and other projects.

Consultations:

- Since the last meeting, the Council had responded to the consultation on Practice Direction 3AA: Vulnerable persons: Participation in proceedings and giving evidence. Malek Wan Daud had drafted the response with contributions from Jaime Craig and Stuart Smith. Elizabeth Gibby informed the Council that the FPRC would be considering the Practice Direction at its next meeting.
- Malek Wan Daud had also drafted the Council's response to the Review of Practice Direction 12J - Child Arrangement and Contact Orders: Domestic Violence and Harm. The review would be considered by the President and the Family Procedure Rules Committee.
- The Council had earlier responded to the Law Commission consultation on its 13th Programme of Law Reform, which sought comments on areas for review and potential reform. The Commission had now completed its first sift of submissions and had confirmed that the three proposed areas (weddings; surrogacy; and birth certificates) would be taken forward for further consideration. The final programme should be published in July.

Enforcement of Family Financial Orders:

Following its 2015 consultation, the Law Commission had published its report and proposed a number of recommendations, many of which would not require primary legislation. The Government was expected to respond in due course and the Council would write to the Minister to convey its support.

Brexit:

At the last meeting the Council had agreed to monitor developments with regard to Brexit and its effect on family law issues. The Secretariat had since approached Lady Justice Black to seek her views on how the Council might liaise with the International Family Law Committee. She would give this her consideration and respond in due course.

Family Drug and Alcohol Court (FDAC):

David Duffett informed the Council that the Department for Education was funding the FDAC National Unit for the first half of the current 2017-18 financial year and would be submitting advice Ministers on whether or not to continue this funding to end March 2019 in

May. A decision was expected in June.

3. Paediatric Expert Evidence

The first meeting of the working group, tasked with producing guidance on the use of paediatric expert evidence, took place in January. Alice Kemp provided an update, explaining that the group was looking at the existing psychologist guidance and how this could be adapted for paediatricians. Consideration was also being given to the inclusion of legal material.

The final document would require the approval of both the Council and the Royal College of Paediatrics and Child Health (RCPCH). The potential for extending the guidance to other professions would be considered in due course.

4. Pre and Post Proceedings Child Protection Mediation

The working group, led by Andrew Greensmith, had met twice. It had looked at how similar schemes worked overseas; made comparisons with other out of court initiatives such as Family Group Conferencing; and considered the potential for child inclusive mediation.

Steps were now being taken to develop a pilot scheme. The Nuffield Foundation had been approached for funding, of which the initial signs were promising, and Professor Judith Masson was being asked to help draft a full funding application. A timetable would be the out once funding was confirmed.

5. HMCTS reform and digitisation – update

Angela Carpenter gave a PowerPoint presentation about the HMCTS transformation project and the move towards a digital justice system. Her presentation can be found at Annex A.

It was noted that the online divorce pilot so far comprised only the initial petition - the application would still need printing and posting. Digitisation of the remainder of the process was still under development. Members raised some concerns about virtual courts, stressing the need for certain decisions to be made by a judge and for the final hearing to be in person.

6. Lessons from research for the judiciary

Nuffield Family Justice Observatory:

Paula Adshead gave a brief overview of developments in Liz Isaacs' absence. An audit of the main research dissemination outlets was being carried out and this would form the basis of a short report. The next stage would comprise telephone interviews with members of the judiciary to determine how they access and use research.

DfE Review on Decision Maker Research:

The review had now been published and is available on 'gov.uk' (<https://www.gov.uk/government/publications/childhood-neglect-and-abuse-comparing-placement-options>). David Duffett outlined that DfE was using a number of routes to

publicise the review – including those it has and those of partners - and members were asked to disseminate the report widely in their own areas.

The Chair expressed concern about the efficacy of using research and particularly the issue of evaluating and updating evidence. He suggested a strategy for culture change was needed and felt that the Family Justice Observatory was a step in the right direction. Courts needed to know that this information was available and perhaps an encyclopaedia of specific topics (similar to the sentencing encyclopaedia) would be beneficial. David Duffett added that the DfE was looking to establish the ‘What Works Centre’ later in the year and that he had already registered that the Centre could help to promote awareness of the review and make it a priority for potential further work. Andrew Greensmith outlined how he had sought to make the review known to members of the judiciary, including how it might form part of the reading for training/sessions at the Judicial College.

7. Research projects

It was suggested at the last meeting that the Council should propose areas of research that the Family Justice Board might wish to take forward. Rosemary Hunter considered that there were gaps, particularly in relation to private law children’s matters, where there had been notable recent legal reforms but a lack of research to follow up on their impact. She identified three topics for the Council’s consideration:

The operation of PD12J:

Since the FJC funded research on the operation of PD12J in 2011-12, there had been a number of developments which had impacted on the implementation of the PD. Systematic analysis of its operation would provide context for anecdotal concerns and provide reliable evidence as to whether the current system was working or needed further reform.

Members expressed concern about the inconsistencies in the operation of PD12J and the impact on the duration of proceedings. Coupled with the concerns expressed in a recent Parliamentary debate on domestic violence, it was agreed that independent research was vital. Although the Nuffield Foundation had previously declined Rosemary Hunter’s bid for funding, consideration should be given to a renewed application with the Council’s backing.

Judge craft in relation to litigants in person:

The Judicial College had produced a small number of training modules for judges on dealing with issues raised by litigants in person. These took the form of short video scenarios which are available for individual reflection and/or group discussion.

Members agreed that it would be useful to extend this initiative to family law scenarios, in collaboration with the Judicial College and the family judiciary. It was agreed to work with a small group of District Judges to pool their experiences and compile a shortlist of scenarios.

Exceptional case funding in family law:

Four years after the LASPO reforms, the success rate for exceptional case funding applications had increased to over 50%. There was now some experience of the type of cases likely to attract exceptional case funding and those where failure to provide legal assistance constituted a breach of human rights. Members considered the benefits of producing some

consolidated guidance for litigants in person, the judiciary and practitioners. It was agreed to get a snapshot of the current situation in the first instance.

Transparency in the family court:

Rosemary Hunter highlighted the recent publication of “*Transparency through publication of family court judgments: An evaluation of the responses to, and effects of, judicial guidance on publishing family court judgments involving children and young people*” (led by Dr Julie Doughty):

http://www.familylaw.co.uk/system/froala_assets/documents/1567/Transparency_through_publication_of_family_court_judgments_March_2017.pdf

The report suggested that adherence to the 2014 guidance was inconsistent and made a number of recommendations. The chair indicated that would be a consultation on a draft Practice Direction to which the Council may wish to respond.

Prison and Courts Bill:

Rosemary Hunter raised concerns about Clause 47 relating to abusive direct cross-examination. She felt that the scope of cases in which automatic prohibition would apply was too narrow and those where discretion should be exercised was too broad, potentially leading to delays in court proceedings and an impact upon resources. Furthermore, there were significant inconsistencies in judicial approaches to the exercise of discretion. It was agreed to submit the Council's views to the next Public Bill Committee meeting on 18 April.

8. Business plan 2017-18

A draft Business Plan had been circulated as Paper 4. It was agreed to consider this out of committee.

9. Debate 2017 – topics

The debate was expected to take place in late November/early December. Members were asked to consider potential topics out of committee.

10. The Outcomes of the Care proceedings for Children Before and After Care Proceedings Reform - interim report

Professor Judith Masson spoke about a study, by the Universities of Bristol and East Anglia, looking at how the changes introduced by the Children and Families Act 2014 and the Public Law Outline had impacted on decisions made in care proceedings and on children's subsequent care. The initial findings from the first part of the study looking at court process and decision-making had recently been published. Professor Masson's presentation is at Annex B.

11. Any other Business

Cross-examination of expert witnesses:

Following discussions at the last meeting Jaime Craig had further researched the issue of expert witnesses being subjected to aggressive cross-examination by litigants in person. His conversations with the British Psychological Society and the Royal College of Psychiatrists

confirmed that this was a common concern amongst professionals. He agreed to explore with the two professional bodies drafting a short paper to set out the issues.

FJC response to research on the housing needs of the resident parents:

Rosemary Hunter thanked those who had contributed to her response. The research was conducted by Cambridge University who were particularly keen to hear the Council's views on the implications for child residence arrangements when one parent is living in shared housing.

Publication of "Mapping Paths to Family Justice: Resolving Family Disputes in Neoliberal Times":

Written by Rosemary Hunter, Anne Barlow, Janet Smithson and Jan Ewing, the book investigates the relative merits of the most common forms of out of court family dispute resolution.

https://books.google.co.uk/books/about/Mapping_Paths_to_Family_Justice.html?id=MCxIDgAAQBAJ&source=kp_cover&redir_esc=y