



Family Justice Council

Minutes of the Council Meeting 23 January 2017, Royal Courts of Justice

Present:

Malek Wan Daud, Barrister – Acting 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
Elizabeth Isaacs QC, Silk (by phone)
Alison Kemp, Paediatrician
Helen Morris, Family Magistrate
Dominic Raeside, Family Mediator
Stuart Smith, Justices' Clerk
Natasha Watson, Public Law Solicitor
Kevin Woods, Department for Education

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

Apologies:

Mrs Justice Pauffley, Chair
Christina Blacklaws, Private Law Solicitor
Sally Holland, Office of the Children's Commissioner
Mr Justice Cobb, High Court Judge
Sara McIlroy, Parents and Families
Matthew Pinnell, Cafcass Cymru
Jane Probyn, Circuit Judge

1. Announcements

Malek Wan Daud had kindly agreed to act as Chair in Mrs Justice Pauffley's absence.

2. Minutes of last meeting and matters arising

The minutes were approved.

Matters arising:

Consultations: Since the last meeting, the Council had responded to two consultations:

- The Law Commission's 13th Programme of Law Reform.
- HMCTS' consultation on the creation of a new senior leadership structure for lawyers working in HMCTS.

Viability Assessments guidance: The Council had been asked by the Family Rights Group to endorse its good practice guide for social workers undertaking viability assessments of family and friends carers. Maud Davis and Natasha Watson considered the document and agreed that it should be endorsed by the Council. Due to launch in February, the guide would provide a useful model to reduce the significant inconsistencies across local authorities.

Recent FJC events: Reports of both the conference and debate would be published in the January edition of Family Law. The transcript and podcast of the debate were available on the FJC website.

3. Business Plan 2016-17

The current Business Plan was circulated for information.

Paula Adshead informed members that the initial planning meeting for Activity 1 (practice guidance on the use of paediatric expert evidence in family proceedings) would take place that afternoon and an update would be provided at the next Council meeting. She also suggested that those activities relating to litigants in person (5 and 6) be amalgamated into one for next year's Business Plan.

4. Workstreams for 2017-18

Members were asked to consider possible workstreams for inclusion in the next Business Plan.

Malek Wan Daud suggested that the FJC should seek to be more proactive and proposed the following topics for the Council's consideration.

Human rights cases: given the current Legal Aid Rules, any compensation awarded to children who were subject of care proceedings, is being swallowed by the Legal Aid Board unless the judge makes cost orders. These cases were becoming more common but there were inconsistencies across the country. Natasha Watson added that local authorities were not insured against such claims and could not recover the costs. Members agreed that

guidance was needed, for the judiciary at least, and would set up a working group to look at the issues.

Natasha Watson and Maud Davis agreed to lead the working group, with the support of Melanie Carew. It would also be helpful to speak to the MoJ Legal Aid team (Rebecca Stimpson, Deputy Director) and Elizabeth Gibby agreed to flag this with colleagues. It was noted that the ALC would also be interested.

FDAC: it was noted that London continued to experience funding problems. However, these issues were being considered elsewhere and there was currently no role for the FJC. Kevin Woods informed the Council that the National FDAC Unit, which provides consultancy and evaluation of pilots based on the London model, was funded by the Department for Education. He agreed to write a short note to feed into the next FJC meeting.

The Council discussed the potential for expanding the FDAC model to neglect cases. Natasha Watson mentioned that East Sussex was already using the model for cases not involving sexual abuse, but there was limited funding.

NSPCC: there was a concern that the Council was not being informed about initiatives such as the NSPCC's LIFT project in Croydon. It would be helpful to have channels through which such information could be communicated to the Council and it was suggested that the LFJBs might fulfil that role.

Conference resolutions: it was suggested that the Council should carry out an audit of resolutions that arose from the Dartington conferences to ascertain whether they were implemented, what the outcomes were and whether they need further publicity. Members agreed but felt that other activities should take priority.

Brexit: it was agreed that whilst this was out of the Council's scope, it would monitor developments. Rosemary Hunter mentioned a Family Law conference on Brexit and would get further information. Alex Clark suggested establishing links with Black LJ's International Committee to check the current position.

5: Secretariat to contact the International Committee for an update.

Other proposals included:

LASPO review: Rosemary Hunter would inform members when the consultation was out and seek volunteers to draft a response.

Section 20: There were concerns about the misuse of Section 20 by some local authorities, notably the long delays in issuing proceedings.

Hybridisation of private and public law: there appeared to be an increasing number of hybrid orders or cases where private law orders are encouraged. There were concerns that it was a backdoor way of saving money.

Migrant children: it was noted that local authorities did not issue care proceedings for unaccompanied children. There were queries over whether there were sufficient checks and balances in place or adequate statutory guidance regarding the threshold for care

proceedings. Discussion followed about whether this was an issue for the Council or the local authorities. Malek Wan Daud reminded members that the Council's role was to highlight issues as a critical friend. Natasha Watson offered to clarify the issues in a short paper for the Council's consideration.

Rosemary Hunter offered further suggestions for future business:

PD12 J: this would merit ongoing monitoring and she was seeking funding to do this.

Exceptional case funding: it might be useful to pull together learning about what has happened so far, looking at the types of cases and applications that proved successful.

Mediation: the Council could look at how mediation might develop following LASPO.

Malek Wan Daud suggested that the Council identify suitable areas of research for the Family Justice Board to take on. These should be approved at the April meeting. Alex Clark suggested a three-month data collection period and assured members that issues with Familyman should be resolved with the introduction of the new IT system.

Vulnerable adults: Jaime Craig suggested that the Council looks at the issue of litigants in person being assessed as vulnerable but carrying out aggressive cross-examination of paediatricians in court. Such assessments might breach their code of conduct.

It was agreed that abuse and harassment of professionals was an issue for the Council's consideration and should be brought to the attention of the court. Guidance to help establish a consistent approach would be useful. This could start with the practice guidance on the use of paediatric expert evidence in family proceedings and be expanded to other professionals.

It was agreed that before any final decisions were made about workstreams for 2017-18, members should see a summary of work being carried over from this year.

6. Pre and Post Proceedings Child Protection Mediation

The Executive Committee had recently agreed to a new FJC working group, led by Andrew Greensmith, looking at the potential for child protection mediation in pre-and post proceedings. The key action points of its first meeting had been circulated to the Council. In summary, the group would consider whether the term 'child protection mediation' was appropriate, and amend its title accordingly, and would look at how mediation could add value to local authorities. Given the lack of current evaluative evidence, the group agreed that it should design and implement its own pilot scheme. Potential funding streams would be explored and the group would seek to involve further stakeholders.

Maud Davis volunteered to join the group on behalf of the ALC. The group would next meet in March and update the Council meeting in April.

7. Lessons from research for the judiciary: update (Nuffield Family Justice Observatory and the DfE's Decision Maker Research)

Elizabeth Isaacs had circulated a paper providing an update on developments. Work was under way on a desk-based audit of research dissemination resources, services and

mechanisms provided for the judiciary. These were being reviewed and catalogued into those resources and services targeted at the judiciary and those which were easily accessible but not produced or disseminated exclusively or primarily for the judiciary. The next stage would be to contact these organisations and conduct interviews to find out more about the research resources available to the judiciary.

Rosemary Hunter felt that the list of organisations was very broad and would need more focus. It was suggested that it should also include the RCPCH , MindEd (child mental health and disability resource), the judicial intranet as well as members of the Council.

The project team would meet at the end of January to review progress and look at next steps. It was agreed to invite a more detailed paper from them in February to feed into next year's Business Plan.

Elizabeth Isaacs also provided an update on the DfE's Decision Maker Research project which aimed to produce an independent summary of available research evidence focusing on comparative outcomes of different placement options for judicial and local authority decision makers. A draft report was being considered by Research in Practice and was expected to be signed off in early March.

It was agreed that the Executive Committee should consider endorsing the report at its next meeting on 20 March. The Council should then consider ways to disseminate it.

8. Vulnerable Witnesses and Children

Members were asked to consider a report on the Review of Practice Direction 12J FPR 2010 - Child Arrangement and Contact Orders: Domestic Violence and Harm. Undertaken by Mr Justice Cobb at the request of the President, the review looked at its current application in the Family Court and recommended a number of revisions.

The following observations were made:

- The review was based on a family justice system used by lawyers not litigants in person.
- There was no automatic provision of a transcript of the judgement.
- Who would provide the schedule of facts found?
- S7 report – if oral, how would the court make a note on file and would LiPs see this?
- It should consider practical arrangements in court (eg. waiting areas) and court closures.
- There were concerns about relying on judges to cross examine witnesses - a significant issue for the Judicial College?
- There were difficulties conducting welfare evaluations when there was no clear picture of findings. Templates and training for PD 12J would reduce the variability with which it was applied.

Malek Wan Daud agreed to draft a response and circulate for comments.

Elizabeth Gibby provided an update on developments regarding the Vulnerable Witnesses and Children practice directions. Having been submitted to Ministers, the practice direction on vulnerable witnesses was now being amended by the Family Procedure Rules Committee

to explicitly include children. A consultation was expected shortly.

The MoJ was continuing its work on the children practice direction, pending other legal priorities.

9. Bridget Lindley memorial lecture

Arrangements were being made for the inaugural lecture which would take place on 9 March, looking at whether the current law strikes the right balance between child protection and the right to family life.

The keynote speaker was Lord Justice McFarlane and the panel, to date, comprised the President, Lord Justice McFarlane and Cathy Ashley (Family Rights Group). Elizabeth Isaacs agreed to join the panel as the legal representative. Consideration would be given to identifying members to represent the academic and social work fields.

10. Support for litigants in person – next steps

A meeting had recently taken place with advice agencies and other interested parties to canvass views on how the family justice system could be made more responsive to the needs of litigants in person. Sara McIlroy had provided a paper outlining some of the issues raised at the meeting.

Rosemary Hunter added that many LiPs felt that mediation was not appropriate and that MIAMs should include information about what was actually involved in going to court. There was a need to change preconceptions and manage expectations.

Next steps would include a meeting with HMCTS to consider how some issues could be addressed as part of the Reform Programme and invite them to speak to the Council.

11. Parties who lack capacity to conduct proceedings – FJC Guidance

Alex Clark informed the Council that the guidance had been revised to incorporate both public and private law and was with the President for his approval.

Malek Wan Daud suggested that the guidance may benefit from a section on LiPs.

12. Any other Business

Paula Adshead informed the Council that the Law Commission had recently published its report on Enforcement of Family Financial Orders. This followed a consultation in August 2015 to which the Council had responded. Christina Blacklaws had agreed to consider the report on behalf of the Council. A Government response was expected shortly.

Daphna Wilson raised concerns that despite the Assistant Director, Children's Services post being advertised twice, there had been no applications. It was acknowledged that the role of the ADCS had increased over the years and it was now time to consider applications from Principal Social Workers.

Maud Davis asked the Council to note that the Children and Social Work Bill was now in Parliament.