



Family Justice Council
Minutes of the Council Meeting held on 17th October 2016 in
Conference Room 2M, Queens Building, Royal Courts of Justice

Present:

Mrs Justice Pauffley, Chair
Christina Blacklaws, Private Law Solicitor
Angela Carpenter, HMCTS
Alex Clark, Secretary to the Council
Jaime Craig, Child Mental Health Specialist
Maud Davis, Public Law Solicitor
David Duffett, Department for Education
Elizabeth Gibby, Ministry of Justice
Andrew Greensmith, District Judge
Professor Rosemary Hunter, Academic
Elizabeth Isaacs, QC
Alison Kemp, Paediatrician
Sara McIlroy, Parents and Families
Helen Morris, Family Magistrate
Matthew Pinnell, Cafcass Cymru
Jane Probyn, Circuit Judge
Dominic Raeside, Family Mediator
Stuart Smith, Justices' Clerk
Natasha Watson, Public Law Solicitor
Paula Adshead, Assistant Secretary to the Council
Taz Said, President's Office
Daphna Wilson, Secretariat

Apologies:

Graham Ritchie, Office of the Children's Commissioner
Malek Wan Daud, Barrister
Melanie Carew, Cafcass
Mr Justice Cobb, High Court Judge

1. Announcements

The Chair welcomed the new members of the Council: Rosemary Hunter, Jaime Craig, Alison Kemp, Stuart Smith, Maud Davis and Natasha Watson.

Arrangements were in hand to recruit an Assistant Director of Children's Services and the vacancy was currently being advertised on the FJC website.

2. Minutes of last meeting and matters arising

The minutes of the meeting on 11th July were circulated as Paper 1. Rosemary Hunter asked for Item 8 paragraph 4, to be amended from "she felt that..." to "the research evidence shows that...". The minutes were, otherwise, approved.

Matters arising:

Financial Needs Guidance for the judiciary was circulated to Designated Family Judges over the summer period to be cascaded to the judges handling money cases in their areas. Mrs Justice Roberts and the Financial Needs Working Group were thanked for their hard work in putting the guide together.

Consultations: Since the last meeting the Council had responded to the Department of Education's consultation ("Knowledge and Skills Statement for Achieving Permanence for Child and Family Social Workers"), and was currently submitting a response to the Home Office consultation ("Reporting and Acting on Child Abuse and Neglect.") Jane Probyn, Andrew Greensmith and Sara McIlroy were thanked for their contributions.

Two further consultations - the Law Commission's 13th Programme of Law Reform and the Nuffield Family Justice Observatory's Call for Evidence – would be discussed later in the meeting.

Department for Education – Decision-Maker Research: Four members of the Council had volunteered to participate in the Steering Group and the first meeting would take place later that day. An update would be provided at the next Council meeting.

3. Business Plan 2016-17 (Paper 2)

Activity 1 - Practice Guidance on the Use of Paediatric Expert Evidence in Family Proceedings: Alison Kemp volunteered to take this forward, with Jane Probyn and Jaime Craig to assist. It would be helpful to involve a RCPCH representative at an early stage.

Activity 2 - awareness of rights and responsibilities of cohabiting couples: It was agreed that there was no current appetite in government to take this forward and, consequently, the activity should be put on the back burner for the rest of the financial year unless there were any signs of movement.

Activity 7 - divorce without blame: Christina noted that similarly to Activity 2, there did not seem to be much interest in government in taking this forward at present. There had been some encouraging signs before the referendum but Brexit was likely to drive issues like this to the margins for the foreseeable future.

Activity 6 - support for litigants in person: Sara McIlroy informed the Council that there was a new consumer focus chief at HMCTS - Sidonie Kingsmill. She indicated that it would be helpful to establish links with her as part of Activity 6 on litigants in person.

4. Lessons from research for the judiciary and Nuffield Observatory call for evidence

The first meeting of the Observatory, chaired by David Norgrove, would take place on 27 October. Liz would consider material for the call for evidence after that meeting in order to gain a clearer idea on which issues to focus. Professor Morris' project for the FJC continued in line with the Observatory's work and Liz would report back at the next Council meeting and to the Family Justice Board.

5. Consultation on Law Commission's Programme of Law Reform (Paper 3)

Responses to the consultation would feed into the decision-making about which projects should be taken forward by the Commission for the period 2017-2020. The Commission contacted the FJC directly in order to invite views on three specific projects with a family flavour: marriage law, surrogacy and birth certificates.

The Chair noted that international surrogacy was increasing at a substantial rate and British families were being left exposed to problems - there was a need to change the law in this area. Liz Isaacs agreed but pointed out that it was a complex area of law and it would not be easy to meet a two week deadline. She had been working with the UK and Ireland LGBT Family Law Institute on a detailed paper on problems with the current law on surrogacy and would go back to them to seek their agreement to share this document with the Council.

Helen Morris felt that birth certificates raised a number of important issues, although the topic would be better described as birth 'registration' rather than 'certificates'. The current law on marriage was showing its age and would benefit from reform but this did not cause the same degree of problems as the current defects in the law on surrogacy and birth registration. Problems came up regularly in the context of the registration of the father. The Council should support a detailed examination of how PR and registration currently worked. The Council agreed that support should be given to all three topics.

6. Conference (Paper 4)

The conference would take place on Monday 24 October. The capacity was 120 and to date there were 80 attendees. These included LiPs, advice agencies, judges, HMCTS, Cafcass, the Law Society, the Bar Council and Families Need Fathers.

Malek Wan Daud had drafted some 'conversation starter' questions which would be circulated after the meeting. Two rapporteurs were attending and their report of the day would be published in Family Law.

7. Debate

The annual debate was scheduled to take place on Thursday 1 December at the Grand Connaught Rooms in London, 5.30-7.30pm. The motion was: "Settlement conferences - are they Article 6 compliant?" Speaking in favour were HHJ De Haas and Sir David Norgrove.

Speaking against were Liz Isaacs QC and Martha Cover. The debate would be advertised later in the week.

8. Bridget Lindley memorial lecture

Lord Justice McFarlane had agreed to give the first lecture on 9th March 2017 and would speak on a general topic, looking at the balance between child protection and the right to family life. The title would be confirmed in due course. The format would be a 45 minute lecture, followed by a 30 minute panel discussion and a Q & A session for 45 minutes. The venue was likely to be the Strand Palace Hotel but this would be confirmed. The lecture would be published in Family Law.

It was agreed that it would be fitting for someone who knew Bridget and her work well to introduce the lecture. It was also felt that an appropriate photo of Bridget should form a backdrop to the lecture.

9. Support for litigants in person - next steps (Paper 5)

Sara McIlroy spoke to her paper proposing a meeting with groups representing the interests of those who use the Family Court to discuss support for litigants in person. The idea arose at the recent Open Meeting at which a number of attendees expressed interest in assisting the Council in looking at improving support for litigants in person. Representatives from MoJ or DFE policy would be welcome.

Lexis Nexis was considering developing an online portal for LiPs - to provide guidance and case law, with the primary focus being on private child law. Sara was seeking to secure a meeting with the Lexis Nexis contact leading on this.

Both Parents Matter and Families Need Fathers had met with the President recently and had submitted a proposal to him regarding a working group.

On the international front, Sara had made contact with the California Bar Association and would feed back any issues that arise from this.

Maud Davis drew the Council's attention to an article by John Altman in the October edition of Family Law, on the topic of dispute resolution.

The Civil Justice Council would be holding an all day event in London on 2 December 2016 on support for LiPs. Rosemary Hunter agreed to attend, along with Sara McIlroy.

10. Vulnerable witnesses and children

Elizabeth Gibby explained that the Family Procedure Rules Committee had agreed to two Practice Directions being submitted to the Minister. They had received feedback from the Minister, who agreed that the PD regarding Vulnerable Witnesses should proceed to consultation. However, the Minister could not agree to the currently drafted PD regarding children and had asked the FPRC to revisit this.

The decision of the FPRC at the last meeting was that the PD on Vulnerable Witnesses should be amended to include children. Once drafted, it would then need to go back to the

Minister. The timetable would depend on how soon the FPRC could produce a new draft of the PD. The Minister was expected to speak at the Family Justice Young People's Board Conference on 27 October 2016 where he was expected to give an update on the position.

11. Parties who lack capacity to conduct proceedings: FJC guidance

Some years ago the FJC had published guidance regarding public law cases where capacity issues were raised. Last year it was revised by Malek Wan Daud and at same time HHJ Raeside produced a document on capacity issues in private law proceedings. The President had asked for the guidance on public and private law to be brought together in one document and a draft was produced. Helen Clift at the Official Solicitor's Office kindly agreed to work on the draft to produce a final version ready for publication. It was expected to be ready for the President's and the Council's approval by Christmas with a view to launching in early 2017.

12. Any other business

A proposal to change the timings of future Council meetings to start at 11am and finish at 2pm was agreed by the Council. The next meeting would run to these new times.