Family Justice Council
Minutes of the open meeting held on 14th July 2014
Media Suite 4, Ministry of Justice, London

Present:

The Honourable Mrs. Justice Pauffley (Chair)
The Honourable Mr. Justice Cobb
Her Honour Judge Katharine Marshall
Sue Berelowitz, Deputy Children's Commissioner for England
Professor Anne Barlow, Academic
Christina Blacklaws, Private Law Solicitor
Alex Clark, Secretary to the Council
Martyn Cook, Family Magistrate
Malek Wan Daud, Family Barrister
Patrick Towgood, DfE
Caroline Little, Public Law Solicitor
Dr. Elizabeth Gillett, Clinical Psychologist
District Judge Liza Gordon-Saker
Bridget Lindley, Consumer Focus, Parent Representative
Joe Murphy, MoJ
Dr. Heather Payne, Consultant Paediatrician
Dominic Raeside, Family Mediator
Andrew Shaw, President's Office
Daphna Wilson, Family Justice Council Secretariat

Announcements and Apologies:
The Right Honourable Sir James Munby, President of the Family Division
Mark Andrews, Justices' Clerk
Tessa Fyffe, Assistant Secretary to the Council
Fiona Green, Cafcass
Amanda Jeffery, Deputy Director, Judicial Office
John Hall, MoJ
Paul Harris, HMCTS
Angela Joyce, DfE
Alistair Davey, Welsh Government

1. Apologies and announcements

The Chair welcomed the group, in particular the guests. The guests were informed that there would be an opportunity for members to answer the pre-submitted questions at the end of the meeting.

The Chair informed attendees of the apologies received.

2. Minutes of the last meeting and matters arising (Paper 1)

On Action Point 1 Sue Berelowitzi (SB) is happy to meet with Alex Clark (AC) to discuss the monitoring of the transparency programme.

Matters arising

Transparency: Following discussion at the Executive Committee meeting, this item has been carried over to the next Council meeting.

Advice to FJB: Following discussion at the Executive Committee meeting, this item has been carried over to the next Council meeting.

Dispute Resolution working group: This item will be carried over to the next Council meeting

3. FJC Business Plan 2014/15 (Paper 2)

This version of the Business plan had been circulated as Paper 2 where it incorporated the comments from members at the last Executive Committee with regards to Children and Vulnerable witnesses (Activity 2) and on activity 6, outcome 3 which was to feed into the President's Financial Remedies Working Part under the Money Arrangements Programme. AC confirmed the business plan will be published on the FJC website. An earlier draft of the business plan was considered and endorsed by the Family Justice Board.

Bridget Lindley (BL) referred to activity 4 and asked for there to be a watching brief on public law as well as on private law.

On activity 2, 'Children and vulnerable witnesses in family proceedings' Cobb J mentioned the President's last View from Chambers which mentioned that the newly formed Children and Vulnerable Witnesses Working Group is to be chaired by Hayden J and Russell J. Caroline Little (CL) of the FJC is a member of this group. Any material produced by this working group will be shared with the FJC for their input. The Chair referred to the short timeframe for the publication of the group's interim report, 31 July. The interim report will aim to outline its preliminary views in relation to any proposed changes to the Family Procedure Rules and Statutory guidelines. The final report is aimed to be completed by November 2014 with publication planned for January 2015. CL asked for an E working group to be set up to discuss matters of interest such as the child's involvement in this process and how they are to be heard. Existing guidance may be adequate but it is vital this

is discussed further. The Children and Vulnerable Witnesses Working Group is represented by the Young Persons Board so it be interesting to hear their views of what they think is in the best interest of children.

On activity 5, this is on feedback to all tiers of the judiciary on the outcomes for children and families from the decisions made in court. SB would like the FJC to report on this. AC had spoken to Professor Judith Masson who has promised to produce a paper by early September. A focus group with judges is to be set up to look at providing feedback to judges. SB would like for the feedback of children on the outcome of cases that directly affects them to be taken into account and which is in line with Article 12 of the European Convention on the Rights of the Child. BL endorsed this proposal and would also like feedback from parents and users to be taken into account. It was agreed that this should also be discussed at further FJC meetings. AC proposed for a paper on this subject to go to the Family Justice Board.

Lastly in relation to activity 1, 'guidance on the use of Expert Evidence in Family Proceedings' Dr. Elizabeth Gillett (EG) confirmed this should be ready for September.

4. Law Commission's Proposals – Working Group

This working group is chaired by Mrs. Justice Roberts and had its first meeting on Monday 23 June. Anne Barlow (AB) attended by phone and AC attended the meeting. The Group has started work on drafting a guide to financial provision on divorce for LiPs. The guide will seek to de-mystify the exercise of judicial discretion in these cases, it will explain key terms like 'Mesher order' and take a 'myth-busting approach. The draft is due to be discussed at the second meeting of the Working Group which was due to take place on the afternoon of 14 July. It is then proposed that the draft is circulated to a selection of out-of-London judiciary and practitioners for their perspective. This working group is looking to encourage a more consistent approach in money cases in all courts. This can be quite challenging due to economic differences across the country.

The aim is for material to be produced for LiPs by the end of November. This would go on the MoJ landing page on Direct Gov and through other avenues e.g. Citizen Advice Bureaus.

Cobb J informed attendees of the Money Arrangements Programme which is a sub group chaired by Mostyn J, that it is working to create tools for LiPs so they can receive a greater understanding on the relevant money procedures that take place in court.

5. MoJ Experts' Pilot

This is a minimum three month pilot that was launched on 17 June in Bristol and Taunton. The pilot focuses on DNA and Drugs and Alcohol testing. It was funded by the MoJ and is being administered by Cafcass. The pilot amounts to £40,000 for the three month period. Interim results are likely to be published in October/November and MoJ analytical services will be carrying out the evaluation of this pilot where the potential for a national roll out of the pilot will be examined.

Funding will be provided to all tiers of the single Family Court in Taunton and Bristol. HHJ Marshall had concerns that traditionally the volume of cases decrease during the summer months and pick up again from September. As a result it was encouraged that the pilot should try to incorporate cases from September and October when carrying out its evaluation. It was also agreed that when evaluating the costs involved that each type of test is clearly identified.

6. FJC response to Justice Select Committee inquiry on LASPO

The four lead members on this response were Malek Wan Daud (MWD), Christina Blacklaws (CB), Dominic Raeside (DR) and Caroline Little (CL). The response has been submitted and is available on the FJC web pages. The response is also among those which have been highlighted on the Justice Committee's web page on the Parliament website. This is an indication of the weight of the Council's multi disciplinary views and the expertise it carries. Furthermore it was thought there would be a strong possibility that the Council would be asked to give evidence in front of the Justice Select Committee.

7. Protected Parties/ Vulnerable Witnesses working group

MWD and HHJ Marshall met with the President, Cobb J, HHJ Alison Raeside, and the Official Solicitor, to discuss finalising the draft updated guidance on parents who lack capacity. It was agreed that the public and private law guidance would be published as two parts of the same document with a forward from the President. It is hoped that the drafting of the guide can be completed in time for publication by late September or early October. The public law guidance will be amended in light of the rule changes since the implementation of the single Family Court.

DJ Gordon-Saker and BL were struck at how there is currently very little guidance on capacity during pre proceedings and that this needed addressing. The Official Solicitor has confirmed recently that that an assessment on capacity before proceedings can be done. SB suggested the need for a leaflet to be produced on this. This would contain clear guidance and very clear definitions for LiPs including for example 'what is a litigant'? SB said such a leaflet could be run past Mencap and BL would run this past users. For cases that don't have a judicial oversight DfE would ensure a similar leaflet would be given to social workers for their proceedings work e.g. fostering/adoption.

Mr Justice Cobb mentioned that the Private Law Working Group suggested for Cafcass to assist judges in cases where there is a lack of capacity. The President has written to Ministers for this to be further considered.

Moving on, the Children and Vulnerable Witnesses Working Group had its first meeting on 8th July. Its remit is to consider whether it will be necessary to revise the Council's 2010 guidance on judges seeing children and its 2011 guidance on children giving evidence. The Group will also examine what can be learned from the material available in the criminal jurisdiction. A key issue will be to draft guidance on the use of intermediaries and whether funding for these can be secured.

SB mentioned that this was being looked at by her office. She voiced her concerns that children in criminal cases were not being offered special measures and as a result this has led to many reports of children being traumatised after the court hearing. The Chair believed that in family cases a judge would not expose a child in that way. Furthermore whereas in crime judges are bound by statutory obligations, in the family court the judge is able to use their discretion in such matters. It was agreed that training for judges was important. AC mentioned that the group comprised of two members from the Young Persons Board. SB was invited to the next meeting.

8. FJC Debate 2014

This will be the Council's 8th annual debate. Following the helpful discussion at the last meeting of the Executive Committee, AC has approached Mr. Justice Newton, Claire Tyler of Cafcass, Sue Berelowitz of OCC and Julia Brophy to speak at the next debate on the 11th November titled, 'Is the Single Family Court open for business?' Around 100-120 people are likely to attend the debate which will be held at the Methodist Central Hall Westminster.

9. Triennial Review

A Triennial Review is a mandatory Cabinet Office process for reviewing the function of a Non-Departmental Public Body (NDPB), the appropriateness of the body's delivery mechanism and its governance arrangements. The Judicial Office project team has now received permission to proceed to Stage 2 of the review. Stage 1 of the review identified that the FJC should remain as an NDPB. The Stage 2 process involves the FJC and its Sponsor, the Judicial Office, working together to complete an assessment template to review the control and governance arrangements in place to ensure that the FJC is complying with recognised principles of good corporate governance. This collaborative work should identify areas of good practice and areas for improvement. Members will be kept informed of developments.

It was agreed that it would be worth exploring the work of similar bodies to the FJC as it could potentially provide the Council with some useful tips and pointers when carrying out its functions in the future.

10. Advicenow Guides

The Advicenow guide 'Applying for a financial order without the help of a lawyer', has been published on the Advicenow website and circulated to members. The President has indicated that he will refer to the guide in his next 'View' and the document will be posted on the MoJ landing page, the FJC web pages, the Judicial Office twitter account and the websites of advice sector organisations like the CABx.

There were concerns about how accessible materials such as these were for LiPs. David Norgorve has expressed his will for a website designed for LiPs to gain access to useful materials to be set up. The MoJ landing page is a step towards this. Joe Murphy (JM) confirmed that the MoJ landing page is due to be revised in light of the initial feedback since its launch and this should be live shortly.

As there is little finance for hard copies of key materials, BL suggested the possibility of having flyers in courts which sign post links to key materials and websites. JM confirmed that he has been working with MoJ communication colleagues on 'online search optimisation' to ensure that LiPs will be able to access the MoJ landing page through search engines such as Google.

It was also suggested for a 'mobile accessible website' for each LiP website to be created as this was cheaper than an app but just as user friendly. MWD suggested for search optimization to also be made within a website such as the MoJ landing page so if for example 'Childs Arrangement Order' was typed into the search engine on the MoJ landing page the relevant materials would instantly appear. JM confirmed he would take this back to MoJ communication colleagues and provide an update paper at the next Council meeting.

HHJ Marshall mentioned that at the private law training for judges, links to all useful websites such as Advcienow were provided. She raised the possibility of an app being created and launched by a publisher such as Jordan's which would provide these links to the user. In turn Jordan's would be able to make money from such an app so there would be a commercial incentive for them. This was well received by members.

11. Questions and answers

Below is a list of the questions that were asked by the guests, along with who provided an answer to these questions at the meeting.

Please see the attached annexes which provide a full written answer to each question.

Some additional comments are provided underneath this table.

Questions for the open meeting on 14 July

Name of person asking question	Question	Organisation /	Name of lead FJC member(s) (as nominated by Executive Committee on 10 June)
Question 1. From Andre Sims	What further changes do you anticipate in family justice over the next 5 years?	A (non-lawyer) Family Mediator in full time practice. has a business background and a degree in Psychology	Christina Blacklaws Dominic Raeside
Question 2. From Mavis Maclean	Are we likely to see any form of convergence between family mediation and family legal services in the near future?	University of Oxford Researcher	Christina Blacklaws Dominic Raeside
Question 3.	How can the family justice system better manage the	CAMHS Academic Unit, Dunstable and	Heather Payne Liz Gillett

From Professor Samuel Stein	interface between court proceedings and child receiving concurrent therapeutic treatment though Child and Adolescent Mental Health Services?	University of Bedfordshire Work with children in range of care and legal settings as both a child psychiatrist and a barrister	Caroline Little
Question 4. From Malcolm Richardson J.P.	To what extent does the Council believe that the transformation of that part of the family justice system which concerns itself with private law Children Act cases to one dominated by litigants in person mean that an adversarial court system is no longer compatible with the best interests of justice for affected families (notwithstanding the moves to encourage/require mediation).	Magistrates' Association	Cobb J Martyn Cook
Question 5. From Mrs Frances Burton	Does the FJC see any problems likely to arise in connection with international child abduction and/or relocation as a result of the change from residence and contact orders to the new Child Arrangements Programme orders? The Centre is currently undertaking research into the long term effects of international child abduction and wonders if the wording in the new orders "living with" or "spending time with" will adequately meet the usual interpretation in relation to rights of custody under the Hague Convention on International Child Abduction?	International Centre for Family Law, Policy and Practice	Cobb J
Question 6.	What did the FJC spend it's	Mediation Plus	Pauffley J

From Paulette Morris	time on in the year ending March 2014?		
Question 7. From Dustin Hutchinson	How do you feel the initial implementation of the single Family Court has gone?	Policy and Research Officer at the Magistrates' Association	To be addressed under question 4
Question 8. From Mary Mullin	Has the FJC considered the potential negative impact on young people of not only newspaper reporting but also comments online by members of the public about their families?	NYAS	HHJ Katharine Marshall

Additional Comments:

With regards to question six, Paulette Morris who asked this question mentioned that before the meeting she wasn't aware of all the functions the FJC carried out. She was very impressed from the discussions that took place during this meeting and in particular 'the work and energy of the Council'. The Chair thanked Paulette for this endorsement of the FJC.

With regards to question eight Mary Mullin from Nyas mentioned that this question on transparency came about as there was a case where a young person was subject to online comments made on her parents. Nyas along with the Association of Lawyers for Children have been drafting a publication on this subject where there are a number of supposedly good suggestions and feedback on how family openness in the court can be improved without being subject to the publication of sensitive information. Nyas were willing to share a draft copy of this report with the FJC. The Chair thanked Mary for her question and update on this topic. The Chair acknowledged that the transparency reforms are still at an early stage. She has noticed that there has been a fall in the volume of family cases being reported. There is however an ongoing concern for young people who have felt their privacy has been breached despite the anonymity of judgments.

The Chair expressed her thanks and gratitude to those who tabled a question and to those Council members that provided a response.

Closing Remarks

The Chair thanked everyone for attending. The Chair informed attendees that Jordan's had provided a number of hard copies of their special edition of Family Law and invited attendees to help themselves to a free copy.

Andrew Shaw
President's Office

Annex 1

Answers to Questions

<u>Question 1</u> – From Andrew Sims. Answered by Christina Blacklaws

What further changes do you anticipate in family justice over the next 5 years?

It's very difficult to answer this question in a couple of minutes!
However, I think we can see some broad themes emerging.
1. It's unlikely that any future government will return legal aid to its pre LASPO status. We've seen a significant decline in the number of civil legal aid providers; a 60% fall in family legal aid and, more worryingly as this was not anticipated, a 40% fall in family mediation cases (MoJ statistics for year 2013-4) Further reductions in family legal aid figures must occur as the pre LASPO cases end.
2. This will, hopefully, lead to a number of providers offering fixed price and low cost services to the public to, in part, meet consumers' needs.
3. Further consolidation of providers is likely but also, perhaps, more specialist niche family law providers as teams break off from firms no longer offering family law or family legal aid services.
4. Like all legal sectors, ITC will continue to play a vital role in device innovation allowing for increasingly sophisticated delivery mechanisms, online and remote services.
5. I do hope that there will be additional support for the mediation community (some ideas set out in the Family Mediation Taskforce report) to enable this important plank of government policy to reach its potential.
6. Finally, I believe practice will continue to harmonise due to the single family court and the implementation of consistent practices across all areas. I sincerely hope this will be supportive of the children and families who have to take part in a court process.

<u>Question 2</u> – From Mavis Maclean. Answered by Dominic Raeside

"Are we likely to see any form of convergence between Family Mediation and Family Legal Services in the near future?"
Whilst one's natural inclination in answering this question would be – "I hope so – seems like a good idea" in practice it is not easy to see how this will translate into actions between family mediation and family legal services.

The Family Mediation Council is currently undertaking a review of its training, accreditation and supervision so that there will be greater congruity between the various mediation organisations with regard to these issues. The four main tenants of family mediation however remain unchanged: family mediation is voluntary, confidential, the mediator is impartial and decision making rests with the participants. Mediation often therefore remains an alternative to family legal services where there might be no legal advice or judicial role in relation to children matters and limited legal advice and a judicial rubber stamp in relation to financial matters. Family mediation's relationship with family legal services can be construed under three sub headings, its relationship with the Courts, its relationship with CAFCASS and its relationship with the Legal Aid Agency with oversight and strategic involvement from the MOJ.

Family Mediation and the Courts

Family mediation only has a presence in approximately 15 to 20% of family Courts. The only financial incentive for family mediators being present in Court is the possibility of undertaking a MIAM where one or both parties might be eligible for legal aid in which case the LAA will pay the mediator. There are excellent models such as Lancaster Family Courts (DJ Greensmith) but these require the co-operation of the judiciary, HMCTS and mediators willing to participate in such schemes largely on a voluntary basis. All DJs and CJs have been trained in the new Act and CAP and, it is hoped this will lead to more referrals from the Courts to mediation; mediation can be used successfully at any point during Court proceedings not simply prior to proceedings in relation to the requirement for a MIAM.

CAFCASS

Over the last 25 years there have been numerous initiatives by CAFCASS and previously the Probation Service all aimed at working with children and families to avoid continued Court involvement and the costly reporting service to the Courts. Given the middle C of CAFCASS stands for Court, it is hard to imagine CAFCASS more actively moving into the community and private family law arrangements without Court involvement. Whilst many would have predicted a huge drop in Section 8 applications following the implementation of the Children Act in 1991 this did not occur. Whilst it is early days it is possible that we are now seeing the start of a reduction in Section 8 applications with a greater emphasis on out of Court dispute resolution services and Courts being seen as the final adjudicator on behalf of children having exhausted all the alternatives. CAFCASS itself is keen to promote SPIPs and other forms of dispute resolution prior to the initiation of any proceedings and whilst this has obvious logical merits institutional constraints based on CAFACASS' links to the Courts and therefore Court applications make this in practice, more difficult to imagine.

There are many incidences of good working relationships between CAFCASS Officers and mediation services and many mediators are former CAFCASS Officers but the communication and referral structures need to improve in this area. The state sector and private practice initiatives are inherently difficult to negotiate but greater involvement between CAFCASS and family mediators, for instance in the field of seeing children and joint training would be an obvious place to start.

Mediation Services and the Legal Aid Agency

Whilst Legal Aid has been available for mediation since 1998 mediation services have not enjoyed, in recent times, good working relations with LAA. The rates paid by LAA to mediators have not increased in over 10 years yet the tasks particularly in relation to eligibility have become much more onerous. Recent audits have been regarded by mediators as simply an attempt by the LAA to claw back fees paid to mediation services rather than a genuine interest in the quality of the service provided. Many mediation services have now folded or are under enormous financial stress and all of these services will have a major reliance on legally aided mediation clients. Many mediation services are attempting to restructure their private mediation practice so that they are never again so dependent on the Legal Aid sector for their mediation revenue. Whilst the recently published Family

Mediation Task Force chaired by David Norgrove did not specifically recommend financial assistance for the provision of family mediation within Courts it did recommend that:

"The MOJ should review the process to give clarity about the future role of assessment, SPIPs and MIAMs to build on what works and to promote inter/agency partnership working with the client as the central focus".

<u>Question 3:</u> From Professor Samuel Stein. Answered by Professor Heather Payne, Dr Liz Gillett, Caroline Little

How can the family justice system better manage the interface between court proceedings and child receiving concurrent therapeutic treatment though Child and Adolescent Mental Health Services?

The court can best uphold the wellbeing of children and young people in family proceedings by firstly, ensuring that cases are dealt with as expeditiously as possible. Tremendous success has been achieved in this since the introduction of the revised PLO, which has almost halved the time cases spent in proceedings, in pursuit of the 26 week standards, with continuing improvement in timeliness. This has been achieved partly through the reduction of unnecessary use of expert witnesses. Whilst expert evidence is essential and highly valued in some cases, in the past the drawn out nature of cases has meant that therapeutic and assessment tasks were overlapping, to the advantage of neither process nor the child. In the future, rapid and high quality decision making at all stages will remain the best safeguard, and clarity about the respective tasks and services needed by the child.

The separation of payment processes for assessment (allowable for payment in court proceedings) and therapy (not allowable) can also make difficulties, but the quicker completion of court cases will again help with this.

Family Justice professionals are well aware of the fact there can be local variability in availability of CAMHS provision across England and Wales, with different skill sets and local policies, meaning that some services feel able to take on cases involved in proceedings, whereas others don't. Due to local decisions about resources, some services only accept referrals for children who have clearly identified diagnoses or formulation that is amenable to an evidence based brief intervention. Again, the number of children not offered a suitable service will be greatly reduced by speedier resolution of cases.

Many areas have moved to providing targeted tier 2 services for Looked After Children, offering counselling support rather than assessment and therapy, but only for defined groups of children, for example, not all not include children on a Special Guardianship Order, but offer the service for children either adopted or in Foster Care.

There is increasing recognition that safeguarding children needs to become a public health issue and to be considered by all services. There is considerable work around neglect, its definition, early recognition and intervention. The work of the Family Drug and Alcohol court has been show to be highly successful, and there are plans to increase availability of

these services. In Wales, the Intensive Family Support Service (IFFS) is available Wales wide and offer specific support to reduce the risk of proceedings for families affected by drug, alcohol or mental health problems.

The FJC is continuing to work with health, mental health , social care and legal professionals to look for continuing ways to promote a dialogue between health and other children's services to achieve the best fit of need and resources to improve outcomes and reduce inequality for children and families.

<u>Question 4</u>: - From Malcolm Richardson JP. Answered by Stephen Cobb and Martyn Cook.

To what extent does the Council believe that the transformation of that part of the family justice system which concerns itself with private law Children Act cases to one dominated by litigants in person mean that an adversarial court system is no longer compatible with the best interests of justice for affected families (notwithstanding the moves to encourage/require mediation)?

1. The significant increase in the number of litigants in person populating the Family Courts since the implementation of the *Legal Aid Sentencing and Punishment of Offenders Act 2012* (which excluded large sections of private law from the scope of legal aid) has undeniably had an impact on the operation of family justice. This is demonstrated in a number of important respects, including:
   a. The expectation of the Judge to become more robust in controlling the case management of a case (in line with the long-established principles of the 'overriding objective' – *rule 1(1) FPR 2010*);
   b. The requirement of the Judge to assist the parties in the formulation and presentation of their cases, so as to achieve the best outcomes;
   c. The increase in the listing time of cases; hearings take longer with Litigants in person.

2. Mr Richardson's question appears to focus in on changes in practice identified in 1(a) and 1(b) above.

3. The Family Justice Council does not consider it helpful to frame the debate about judicial practice in private law family cases in terms of 'inquisitorial' and 'adversarial' practice. While the English court system is essentially an adversarial one (see *Air Canada and Others Appellants v Secretary of State for Trade and Another* [1983] 2 A.C. 394, and *Al Rawi & Ors v The Security Service & Ors* [2012] 1 AC 531), practice inevitably adapts to the needs of a case.

4. This is particularly so in the Family Court where more active judicial intervention is required to yield the best outcomes for parties who do not have legal representation, in cases where welfare-based decisions in the interests of a child or children are required.

5. These points were discussed by the President of the Family Division at the time of the launch of the Family Court[1]. In dealing with the point at 1(a) above, he said:

> "*The fact is the modern system is critically dependent upon robust and vigorous case management by the judge. The parties no longer set the agenda. The judge decides what the issues are which the parties are going to be allowed to argue. Critically the judge decides what evidence he is going to hear. … we have very vigorous robust case management which has in a very significant way transformed the system, so the system we have already is in part inquisitorial in the sense that it's the judge who sets the agenda. It is adversarial in terms of the actual process in the courtroom where the parties adversarially argue out on the agenda set by the judge.* "

6. It is of course noted that Lord Thomas CJ in his lecture 'Reshaping Justice', (Justice Lecture) (3 March 2014), also discussed the issue raised by Mr. Richardson's question, observing that:

> "*to some a change to a more inquisitorial procedure seems like the obvious or the only solution to the present situation we find ourselves in with the increase in litigants-in-person and the need to both secure a fair trial for all whilst doing so within limited and reducing resources that have to be distributed equitably amongst all those who need to resort to the courts*"

The Lord Chief Justice, like the President, we suggest, was simply referring to the "*essence*" of the change being "*a much greater degree of inquiry by the judge into the evidence being brought forward*" (i.e. more robust case management).

7. In dealing with point 1(b), the President said this:

> "*The new thing we've got to grapple with, given that there is so little legal aid now in private law cases, whether children cases or money cases, is that the adversarial system assumes axiomatically that the litigants will be represented, at least if they wish to be represented. The big change now is that we have litigants in person who, in contrast to litigants in person of previous years who chose to be unrepresented, are litigants in person who do not want not to be represented and would wish to be represented but cannot be; therefore litigants in person who are less qualified by wish, by ability, by personality to represent themselves in court. And in relation to that it seems to me inevitably it's going to have an impact upon the way in which the judge handles the case. I mean, it's a slight parody but when I began there were judges who sat there sphinx-like and said nothing until they gave judgment. Well, in the modern world if you have two litigants in person arguing a family case that simply will not work. It will not produce justice. It is simply a recipe for injustice and it seems to me inevitable that in that sense the process in court before the judge, where there are litigants in person, has got to become more inquisitorial than it has in the past. So I think that is, as it were, a development in a process which has been underway for quite some time. That doesn't mean we're going to end up with a continental*

[1] http://www.judiciary.gov.uk/wp-content/uploads/2014/05/munby-press-conference-290420141.pdf

inquisitorial system but we are already a long way removed from the traditional adversarial system".

8. The changes discussed by the President were signalled by Ryder J in his report on The Family Justice Modernisation Programme, 4th Update (Judicial Office), and have been subsequently discussed in a number of recent cases, examples of which are set out below, to which reference may usefully be made in answering this question:

   a. *Mole v Hunter* [2014] EWHC 658 (QB) (Tugenhadt J)

      "I conducted the hearing by asking first Ms Hunter and then Ms Mole about each of the matters complained of in the counter claim. I then gave each of them an opportunity of asking questions of the other. Ms Mole chose to ask no questions. I then went through the chronology of events as I understood them to be, inviting each of them to correct or complement the understanding I had formed on my own reading of the papers and to make their submissions. Before doing this I invited each party for their consent to the procedure I proposed to adopt, although in my view CPR r.3.1 (2) (m) is sufficiently wide to make such consent unnecessary. I also indicated that I also proposed to hear both applications before me before making a ruling on either of them"

   b. *Re R (a child)* [2014] EWCA Civ 597 (Black LJ)

      "Where, as here, the appellant is unrepresented, this requires all those involved in the appeal process to take on burdens that they would not normally have to bear".

   c. Re *C (a child)* [2013] EWCA Civ 1412 (Ryder LJ)

      "*If the dispute is not immediately susceptible of conciliation or out of court mediation it will require a lawyer's analysis. This is after all a court of law. In the absence of lawyers, the judge has to do that and to do that without assistance and sometimes with quite vocal hindrance. That requires more time than in a circumstance where the lawyers can be required to apply the rules and practice directions, produce the witness statements, summaries, analyses and schedules, obtain instructions and protect their lay client's interests. Where a court is faced with litigants in person the judge has to do all that while maintaining both the reality and perception of fairness and due process*".

   d. *Re W (a child) [2013] EWCA Civ 1227* (public law proceedings), and Re D [2014] EWCA Civ 315 (private law proceedings – extending the approach in public law)

      "*Provided that procedural protections are identified and used by the court, the process of fact finding in family proceedings is quasi-inquisitorial. The welfare of a child may sometimes require a judge to make decisions about facts and/or value judgments that are not asked for by either party. A judge cannot shrink from doing so. That is his function. He must identify such questions and where necessary decide them*".

<u>Question 5:</u> From Frances Burton. Answered by Stephen Cobb

Does the FJC see any problems likely to arise in connection with international child abduction and/or relocation as a result of the change from residence and contact orders to the new Child Arrangements Programme (sic.) orders?

The Centre is currently undertaking research into the long term effects of international child abduction and wonders if the wording in the new orders "living with" or "spending time with" will adequately meet the usual interpretation in relation to rights of custody under the Hague Convention on International Child Abduction?

1. **Introduction**: This question raises potentially complex issues of domestic and international law, and the interpretation of international legal instruments (including notably *The Hague Convention on the Civil Aspects of International Child Abduction 1980*. and *Council Regulation (EC) No 2201/2003 concerning jurisdiction and the recognition and enforcement of judgments* 'The Brussels II Revised Regulation' (2201/2003)) both here and abroad.

2. In that sense, the question is strictly outwith the Terms of Reference of the Family Justice Council (FJC).

3. Moreover, the FJC considers it possible, indeed likely, that the issues raised by this question will be considered (indeed, will *need* to be considered) by Judges of the Family Court, Judges of the Family Division of the High Court, and/or by Judges of Civil jurisdictions internationally in the context of international family disputes in the months and years ahead. It is anticipated that judicial guidance will therefore develop on this point.

4. However, members of the Council recognise the importance of the question asked, and offer this response which will need to be viewed in the light of developing jurisprudence.

5. **Context:** *Section 8* of the *Children Act 1989* has been amended by the *Children and Families Act 2014* (*C&FA 2014*) to remove residence and contact orders from the repertoire of private law orders and replace these with Child Arrangements Orders, which regulate the arrangements relating to (a) with whom a child is to live, spend time or otherwise have contact, and (b) when a child is to live, spend time or otherwise have contact with any person (s 8(1)).

6. The answer poses two separate questions (in relation to (a) relocation and (b) abduction). The answer is therefore divided into two distinct parts, to deal with the two types of international dispute.

   Response (1): Relocation:

7. The FJC does not consider that the new terminology of the Child Arrangements Orders is likely to have an impact on international relocation cases.

8. This type of case is determined by reference to best interests of the child (*section 1(1) CA 1989*). The Court of Appeal in *K v K (Relocation: Shared Care Arrangement)* [2011] EWCA Civ 793 [2012] 2 FLR 880 laid to rest any notion that there should be a determinative presumption in favour of such an application, and as Black LJ said at §141:

> "*the principle – the only authentic principle – that runs through the entire line of relocation authorities is that the welfare of the child is the court's paramount consideration. Everything that is considered by the court in reaching its determination is put into the balance with a view to measuring its impact on the child*." (emphasis in the original)

Adding (§143)

> "*I detect in* [Dame Elizabeth Butler Sloss P's] *discussion of the factors and in her summary at para [85]* [in Payne v Payne [2001] 1 FLR 1052] *no weighting in favour of any particular factor. She said that the reasonable proposals of the parent with a residence order wishing to live abroad carry 'great weight' whereas the effect on the child of denying contact with the other parent is 'very important' but I do not infer from that phraseology any loading in favour of the reasonable proposals as opposed to the effect of the loss of contact*."

And (§145)

> "*When a relocation application falls to be determined, all of the facts need to be considered*."

9. If the Court has been required to complete the certificate pursuant to *Article 41(1)* of the *Brussels II Revised Regulation* it will surely have turned its mind to, and declared, whether it is granting 'rights of access' for that purpose.

Abduction and 'rights of custody'

10. In the field of abduction, the FJC recognises that the position is less clear. It should be noted, of course, that the Hague Convention is concerned with the enforcement of *rights* of custody, rather than only the enforcement of *orders* with respect to custody to which the European Convention is confined. As discussed below, it is not necessary for there to be a court order concerning the custody of the child before The Hague Convention can operate to enforce a right of custody which may exist independently of any such order.

11. Rights of custody, in the context of the Hague Convention, are defined as including "*rights relating to the care of the person of the child and, in particular, the right to determine the child's place of residence*" (Article 5(1) 1980 Convention contained in *Schedule 1 Child Abduction & Custody Act 1985*) (see also *Article 2* of the Brussels II Revised Regulation – though note that the wording of the Convention and the Regulation are not in all respects identical). These 'rights' are determined in accordance with the law of the state in which the child was

habitually resident immediately before the removal or retention (see *Re K* [2014 §22).

12. What is actually meant by 'rights of custody' has continued to exercise the courts domestically and internationally, including the UK Supreme Court, for many years.

13. A very recent decision of the Supreme Court (15 May 2014) (*Re K (A child) (Northern Ireland*) [2014] UKSC 29 exposed the continuing uncertainty:

> "*So what is meant by "rights of custody"? It might be thought that the meaning of a concept so central to the operation of both instruments would be well settled by now. But this is not even true within the United Kingdom.*" (Baroness Hale §1)

With specific reference to the Explanatory Report of Elisa Perez-Vera to the Hague Convention (1982), Baroness Hale referred to the Court

> "*… looking for "the existence of a right of custody which gives <u>legal content</u>" to the situation which was modified by the abduction.*" (§52) (emphasis added).

14. **The problem identified:** The terminology 'child arrangements order' (to replace 'residence' and 'contact') was first proposed in the Final Report of the Family Justice Review. In light of a concern about terminology raised by the Family Law Bar Association, the panel (Final Report 2011) referred to the fact that:

> "*The removal of residence and contact orders will mean some consequential changes to current legislation. Careful consideration will need to be given to the implications for rights of custody*" (Page 149)

15. A year later, this issue was further examined by the Justice Committee in its Pre-Legislative Scrutiny of the Children and Families Bill (HC 379) (published on 14 December 2012), which had been prompted by the Government's publication of draft clauses on family justice.

16. In its evidence to the Committee, the Family Judiciary (HC379, Ev88) said this:

> "*In cross-border cases, there may be particular difficulties in interpreting the meaning of a child arrangements order for the purpose of determining rights of custody and rights of access and in applying international instruments to such an order. For example, would a child arrangements order be recognised in another EU Member State as an order conferring rights of access for the purpose of Brussels IIA, Art 41?*
>
> *A residence order confers parental responsibility on an applicant who does not otherwise have parental responsibility. Grandparent carers in particular, and also others, may care for a child on the basis of informal arrangements. But if they do not have parental responsibility a removal from the jurisdiction by a person with parental responsibility may not be wrongful within the meaning of the Hague Convention.*

To bring carers within the remit of the Hague Convention, legislation could make provision for child arrangements orders (or perhaps only those constituting care arrangements) to confer parental responsibility on carers, thus rendering a removal wrongful; or alternatively provide another route by which carers may acquire parental responsibility.

The making of an application for an order which carries with it parental responsibility would, under the present law, be deemed to give rights of custody (or at least a right of veto to removal, which amounts to a right of custody) to the court and the applicant."

17. The Justice Committee concluded (§138) that there is:

> "*the potential for problems because the looser language of the draft clause makes the meaning of the subsections more debatable. We therefore recommend that the individual elements of the CAO are separately set out within the draft clause, leaving one order, but with clearer contents; and secondly, that the clause sets out that the person with whom the child is to live has rights of custody for the purposes of the Hague Convention and other relevant international family law treaties.*"

18. **Discussion**: There are of course many family situations in which the arrangements for children are not regulated by court order at all. In those circumstances, if an international abduction takes place, the court in the country where the child has been taken will have to decide whether the left behind parent has '*rights of custody*' which have been breached for the purposes of the 1980 Convention.

19. Therefore, to state the obvious, Child Arrangement Orders will not have any impact on those cases.

20. The concepts of 'rights of custody' and 'rights of access' are autonomous to the Conventions concerned. A major consideration in determining 'rights of custody' is whether a person has parental responsibility - see *Re D (Abduction: Rights of Custody)* [2007] 1 FLR 961 (HL), and specifically (per Baroness Hale):

> "*do the rights possessed under the law of the home country by the parent who does not have day to day care of the child amount to rights of custody or do they not?*"

In *Re D*, the House of Lords held that if a parent has a right to veto the removal of the child from the home jurisdiction that right does amount to 'rights of custody' within the meaning of *Art 5(a)* of the Hague Convention. The existence, however, of a 'potential right of veto' (for example the right to go to court and seek an order) is insufficient to establish 'rights of custody'

21. For the avoidance of doubt, all mothers have parental responsibility, as do fathers married to the children's mother, fathers not married to the children's mother who hold a parental responsibility agreement or order, fathers registered as such on the child's birth certificate, special guardians, step-parents, prospective adopters of a child subject to a placement order, and local authorities holding statutory orders (but not where children are accommodated).

22. In some cases the existence of court proceedings and orders may mean that removal is in breach of custody rights attributed to the court even if the father or other carer does not have parental responsibility. This is certainly the case if the court has specifically prohibited removal from the jurisdiction. The removal of a ward of court is certainly in breach of the custody rights vested in the court: see more generally on this topic the Supreme Court decision in *Re K (A child) (Northern Ireland)* [2014] UKSC 29.

23. Child Arrangement Orders under *section 8* of the *Children Act 1989* do not of themselves convey 'rights of custody'; the extent to which these orders carry parental responsibility is determined by *section 12 CA 1989*. Important amendments to *section 12 Children Act 1989* (introduced by *schedule 2* to the *Children and Families Act 2014*) make new provisions for the grant of parental responsibility where Child Arrangements Orders are being considered, &/or made.

24. It seems likely that the courts will readily conclude that orders providing for a child to 'live with' a parent, accompanied by parental responsibility, will endow that person with 'rights of custody'. Where parental responsibility accompanies a 'spend time with' Child Arrangements Order, the position is less clear.

25. The position of a person who has the benefit of a 'spend time' with order, without parental responsibility ought probably to be considered in light of the comments of Baroness Hale (with whom the majority agreed) in *Re K* [2014]; she confirmed the existence of a class of person who had 'inchoate' rights (a status with 'legal content') which should nonetheless be considered as 'rights of custody' for the purposes of the Convention and Regulation:

> (§59): "*I would define such people thus. (a) They must be undertaking the responsibilities, and thus enjoying the concomitant rights and powers, entailed in the primary care of the child. Thus, for example, our law recognises the obvious truth that people who are actually looking after a child, even if they do not have parental responsibility, may "do what is reasonable in all the circumstances of the case for the purpose of safeguarding and promoting the child's welfare" (Children Act 1989, s 3(5)). (b) They must not be sharing those responsibilities with the person or persons having a legally recognised right to determine where the child shall live and how he shall be brought up. They would not then have the rights normally associated with looking after the child. (c) That person or persons must have either abandoned the child or delegated his primary care to them. (d) There must be some form of legal or official recognition of their position in the country of habitual residence. This is to distinguish those whose care of the child is lawful from those whose care is not lawful. Examples might be the payment of state child-related benefits or parental maintenance for the child. And (e) there must be every reason to believe that, were they to seek the protection of the courts of that country, the status quo would be preserved for the time being, so that the long term future of the child could be determined in those courts in accordance with his best interests, and not by the pre-emptive strike of abduction*."

26. In any case where Child Arrangements Orders, or Parental Responsibility Orders, are made, and where the risk of international abduction is apparent, the

FJC suggest that any such order (and Judgment) should make clear what the position is in relation to 'rights of custody' (see also for example the President in relation to care cases in *Re E* [2014] EWHC 6 (Fam), paras [35]-[36]).

27. On a linked note, it is to be noted that Edward Timpson MP (Parliamentary Under Secretary of State for Children and Families) reported to the Public Bill Committee (14 March 2014) that:

> "*When Lord McNally—the Justice Minister—and I appeared before the Justice Committee in the pre-legislative scrutiny process, we gave evidence on how information, through the Ministry of Justice, would be disseminated to other states, so that there is a clear understanding of the implications of our legislative changes. Those efforts will continue to be made, so that there is a clear sense of the direction of travel in our jurisdiction when other states' jurisdictions come into contact with ours*"

28. It would be useful for the Parliamentary Under Secretary of State for Children and Families to make more widely known what information has been provided, and how.

29. Plainly, if any parent feels aggrieved by a foreign country's interpretation of the 'rights of custody' provision, he/she would communicate this to ICACU and/or to the Office for International Justice (some international judicial liaison may be achievable).

<u>Question 6</u> – From Paulette Morris. Answered by the Chair.

What did the FJC spend its time on in the year ending March 2014?

Highlights from the FJC's work during 2013-14 include:

1) the publication of a joint consultation paper with the MoJ on standards for experts in family proceedings in May 2014. The standards were drafted Council's Expert Working Group chaired by Dr Payne. The response to consultation was overwhelmingly positive and ministers have decided to implement the standards. The rules of court needed to implement the standards are expected to be made later this year.

2) The Inter-disciplinary conference held in February this year. The title of the conference was 'Family Justice redefined?' The conference featured papers from 30 speakers which focused on how litigants in person in private law cases can best be helped to access justice after the LASPO changes to Legal Aid and on the reforms to public law cases. A selection of the papers were published in a special issue of Family Law in May this year. One of the participants was Catherine Lee, a senior official at the MoJ, who answered some challenging questions from the floor on a range of the MoJ's policies and gave a welcome undertaking to look again at the exceptional funding regime under s10 of LASPO.

3) The FJC Annual debate in November 2013 focused on family mediation which has seen a decline in new mediation starts of over one third since the implementation of LASPO in April 2013. This is because of the loss of the referral route through publicly funded solicitors. The debate gave family mediators an opportunity to explain the problems thrown up by LASPO and the transcript and podcast of the event provided valuable material for the work of the Mediation Taskforce subsequently established under the chairmanship of David Norgrove with the remit of reversing the decline of family mediation.

4) The Council's Working Group on Dispute Resolution Services agreed and published guidance on risk assessment and agreed a set of safeguarding standards for dispute resolution services. The Group also provided valuable input to the new Parenting Agreements which have now been published and made available to separating parents.

5) The Council has funded and provided input to the development of a guide to financial proceedings on divorce aimed at helping Litigants in Person. The guide has been developed by AdviceNow and has now been published.

Question 7: From Dustin Hutchinson. Answered by Stephen Cobb and Martyn Cook

How do you feel the initial implementation of the single Family Court has gone?

1. General Comment

Information obtained from the regions, aswell as London, confirms the impression which is shared by the members of the Family Justice Council that initial implementation of the Family Court has gone well.

Across the country there has been a general sense of good will and co-operation among all parts of the Family Justice community, accepting (indeed embracing) the fact that they are part of a unified system, and working together for the benefit of the families and children involved in the system.

2. Legislation and the new Rules

The recent legislation changes in the field of public law (particularly *section 14-16 Children and Families Act 2014*) have given formal status to initiatives first launched following the final report of the Family Justice Review to reduce the length of public law cases. In that sense, the implementation programme post-22 April 2014 was not proceeding from a 'standing start'.

Nationally, we believe (and we understand that the data bear this out) that there has been significant progress towards achieving the 26-week time limit in Public Law cases. Local Authorities have improved their preparation of cases so that when applications are made to the Court, reports and assessment have been completed and the case in able to proceed on the agreed timetable.

The legal profession and the Judiciary have adjusted to the legislative control on the use of expert witnesses (*section 13 C&FA 2014*), which had, itself, been the developing practice of the courts since the implementation of the amended *rule 25* of the *Family Procedure Rules 2010* (early 2013).

The changes in nomenclature and culture in the field of private law were, as with the reforms in public law, heralded in large measure by the Family Justice Review (November 2011), and by the Report of the Private Law Working Group, and early draft of the Child Arrangements Programme (November 2013). Regrettably, the late passage of the *C&FA 2014* through Parliament delayed publication of the amended *Family Procedure Rules*; this meant that practitioners, legal advisers and Judges had little time to familiarise themselves with the finalised procedures under the Child Arrangements Programme (and associated Guidance). The late publication of the Rules had a further impact on the preparation by the Family Orders Project of the proposed draft Orders in private law which allowed no time to 'road-test' them before release.

Generally, we understand that private law reforms have been well-received.

The Gate keeping and Allocation Teams (comprising District Judges and Legal Advisers) appear to be working well, and few problems have emerged with either public law or private law allocations. In private law, it is too early to make an informed evaluation of the number of cases which require re-allocation when safeguarding information is to hand, but this is being kept under review.

There have been some issues with the new rules regarding powers of Magistrates compared with District Judges, however these have been resolved with guidance.

In some areas there have been issues with listing FHDRA, and allowing enough time for these hearings given the higher numbers of litigants in person.

3. Administration Changes

The new arrangements for the single point of entry seems to be working well including the use of the MoJ website which directs applicants to where their applications need to be filed

The implementation of changes to the Family Court IT systems has also been good, despite a very steep learning curve for the Court staff.

Initially there were some issues with the use of the new forms as part of the Child Arrangement Programme which caused delays in some areas with issuing of the orders by the Court office. However, as court staff and the Judiciary have become more familiar with the changed IT system these have been resolved. A new Template Programme has been commissioned by HMCTS, written by District Judge Edwards (who sits in Bradford), and is soon due for release. This will give the judiciary the

opportunity to create bespoke orders in each case relatively quickly, and in a format which is adaptable to the Family Man programme.

Internal HMCTS issues arising with the use of forms and issuing of Orders are resolving.

4. London

The West London Family Court, incorporating judiciary at all tiers in the Family Court, was operating from 22 April, and is said to be working well with under its new Designated Family Judge, Her Honour Judge Rowe QC.

A Court building for the East London Family Court has now been secured, with a moving date of later this year; its new DFJ is Her Honour Judge Atkinson.

The co-location of magistrates and judges in the Central Family Court has inevitably experienced teething problems, but is widely regarded as a positive development.

5. Litigants in Person and Mediation Services

Since the implementation of the *Legal Aid, Sentencing and Punishment of Offenders Act 2012* (1 April 2013), and the significant exclusion of large numbers of parties from the scope of legal aid in private law cases, there has been a predictably significant increase in the number of Litigants in Person populating the Family Courts. However the Courts (in both the administrative and judicial functions) are learning to deal with the changes. One of the most significant impacts has been the increased time taken to hear cases in which both parties are Litigants in Person.

Whilst the withdrawal of Legal Aid was part of the drive towards encouraging parents to seek mediation and other forms of non-court dispute resolution (to resolve issues other than using the Court process) this does not appear to have led to a significant increase in mediation services nationally. Indeed in the last 14 months, there appears to have been a sharp decline in the use of mediation services.

Consequently, it appears that many Mediation Services are in financial difficulty. We note with considerable regret the recent the closures of the Manchester, and Bristol Mediation Services; the Bristol service, which also covered Gwent and South Wales, was the oldest in the country.

The implementation of *section 10 C&FA 2014* (Family Mediation Information and Assessment Meetings), together with the changes to *rule 3* of the *Family Procedure Rules 2010* have fundamentally changed the route to court in private law disputes, requiring applicants to attend a MIAM (Mediation Information and Assessment Meeting) prior to making an application (subject to limited exemptions). It is too early to make any real evaluation of the impact of these changes.

6. Training on Child Arrangements Programme

The Judicial College ran a successful one-day training programme on the private law reforms, training all 1,300 private-law ticketed judges at seven venues around the country.

The Magistrates have expressed their understandable disappointment that training on private law reforms was not available to be delivered at the same time as the rest of the family judiciary. However the training programme for the magistrates will now be delivered throughout August – September. Although the Magistrates have not yet received training (although some Legal Advisers were trained with the rest of the family judiciary), the FJC has not received reports of any particular problems arising within cases being heard by the Family Magistrates.

Question 8 – From Mary Mullin. Answered by HHJ Katharine Marshall

Has the FJC considered the potential negative impact on young people of not only newspaper reporting but also comments online by members of the public about their families?

The short answer to this question is 'yes'. By way of background, at the Council meeting on 15 July 2013, 'Transparency' was an agenda item. The President's consultation document had been circulated, and an Action was minuted that "***The Council is invited to consider and submit a joint response to the President***". A response was submitted in October 2013, and contained the following relevant points:

4. The publication of family court judgments of course engages important rights of children including the rights to private and family life under Article 8 ECHR and Article 16 UN Convention on the Rights of the Child (UNCRC); the right to be heard and for the child's views to be given due weight in all matters affecting them (Article 12 UNCRC) and the obligation that the child's best interests should be a primary consideration in all decisions about their lives (Article 3 UNCRC); in some cases publication may also risk their safety and right to be free from abuse and maltreatment (Articles 2 and 3 UNCRC and 6, 19, 24 and 34 UNCRC), as well as engaging the state's obligation to take all appropriate measures to promote the recovery and social reintegration of child victims of abuse and neglect (Article 39 UNCRC).

5. …..the Council is concerned at the potential for adverse consequences to children and families in the publication scheme that the draft guidance proposes.

6. Research with children by Dr Julia Brophy at the University of Oxford undertaken for the Office of the Children's Commissioner in 2009[2] highlights three potential types of adverse effect as a result of publication. Firstly, adverse consequences for children in their schools, neighbourhoods, and communities resulting from their identification: children were afraid that personal, painful and humiliating information would be disclosed and they would be embarrassed, ashamed and bullied. We are concerned that anonymisation of families' details may be insufficient to prevent this in some cases due to the potential for 'jigsaw identification', in particular from the names and addresses of solicitors being included. As the draft guidance makes clear at paragraphs 8-10, children's anonymity is not protected once the proceedings conclude and, for example, parents – or presumably others - may children as having been involved in the proceedings.

9. …The best interests of the children in the proceedings should be at the least a primary consideration, if not the paramount consideration, in any decision to publish. Children should be given the opportunity to present their views on whether judgments should be published and, if so, what detail should be anonymised to protect their identity, and their views should be taken into account.

14. The Council therefore believes that alternatives to more extensive publication of judgments should be employed to increase the openness and public confidence in the family court system…

The issue was again on the Agenda for the Council meeting on 20 January 2014, by which time the President's Practice Guidance had been published. The minutes record as follows: "*Members asked questions about proposals to monitor and review the impact of the practice direction, not just on cost, but on the children involved. Members asked for enquiries to be made of the OCC.*

[2] J Brophy, *The Children's Commissioner for England's report on: The views of children and young people regarding media access to family courts*, 11 Million: London, 2010.

At the following meeting in April 2014, Transparency was raised as an ongoing concern, and members again requested that this item be added to the agenda for the next meeting. HHJ Marshall shared with the Council her experience following the local newspaper having reported a judgment, those concerns and the discussion that followed considered the ability to comment on-line on such articles and the impact on those involved. The minutes record "*Members called for monitoring of the effects of the transparency process, though it was agreed that the Council was not best placed to undertake such a task. Sue Berelowitz invited Alex Clark to discuss this further, and the OCC would wish to explore the possibility of assisting under its statutory duty.*