



**Family Justice Council**  
**Minutes of the full Council meeting held on 20th October 2014**  
**Conference Room 2M, Queens Building, Royal Courts of Justice**

**Present:**

**The Honourable Mrs. Justice Pauffley (Chair)**  
**The Honourable Mr. Justice Cobb**  
**Her Honour Judge Katharine Marshall**  
**District Judge Liza Gordon-Saker**  
**Professor Anne Barlow, Academic**  
**Alex Clark, Secretary to the Council**  
**Mark Andrews, Justices' Clerk**  
**Malek Wan Daud, Family Barrister**  
**Angela Joyce, DfE**  
**Caroline Little, Public Law Solicitor**  
**Dr. Elizabeth Gillett, Clinical Psychologist**  
**Bridget Lindley, Consumer Focus, Parent Representative**  
**Joe Murphy, MoJ**  
**Melanie Carew (Cafcass)**  
**John Daly, Ass Director of Children's Services**  
**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**  
**Martyn Cook, Family Magistrate**  
**Emily Tuttiett, Wales**  
**Christina Blacklaws, Private Law Solicitor**  
**Sue Berelowitz, Deputy Children's Commissioner for England**  
**Amanda Jeffery, Deputy Director, Judicial Office**  
**John Hall, MoJ (Joe Murphy attending on his behalf)**

**1. Apologies and announcements**

The Chair welcomed the group and informed attendees of the apologies received.

The Chair gave an update on the current FJC recruitment process. Interviews for the Parent and Family Representative, the silk and magistrate members were held last week. Appointable candidates have been identified and a submission will go up to ministers shortly.

The recruitment process to identify a successor to Tessa has yet to be concluded and a further round of interviews will take place next month.

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

The minutes were approved without amendment.

## **3. Consultation on transparency and Dr Julia Brophy's paper (Papers 2 & 3)**

The President issued his consultation paper on the second stage of the transparency reforms in August. Caroline Little has been the lead on this for the Council. Caroline would welcome assistance to the Council's response on this Consultation and mentioned she would approach Christina Blacklaws. Dr Heather Payne who was gathering the views from clinical colleagues believed that the current proposals were not child centric enough in that there were concerns on the potential vulnerability of the child following the judgment of their case e.g. about confidentiality and privacy and the risk of jigsaw identification. Furthermore there is the risk on how the local media will report cases in that there is the potential for local authorities and social workers to be named.. Dr Payne believed that for this to be avoided a lot more could be done on the anonymisation of judgements so information cannot be narrowed down to individual/local authorities. It was recognised and reiterated by the Chair that this Consultation aims to provide a balancing exercise between the public interest to know what goes on in the Family Court and the right of individuals to privacy and confidentiality.

Caroline mentioned that she needed input from Cafcass on the role and extent that a guardian interacts with the child following judgment of a case. Apparently there're no rules of court to say what the guardian can or cannot do in such instances. John Daly mentioned that from a local authority perspective there is no fixed rule so this tends not to happen. Melanie Carew of Cafcass will report back on this once she has clarified the President's recommendations before any relevant training can take place.

Dr Julia Brophy's paper, jointly commissioned by NYAS and the ALC, was published in August. Alex Clark mentioned that the President recently met with a number of the young people who contributed to this paper. They expressed their concerns about confidentiality and privacy, their distrust of the media, and their concerns about the risk of jigsaw identification and the dangers of bullying to the President. The President explained that it was very important to listen to the views of children and young people but he could not guarantee to agree with them or to act upon them in the way they might wish. The President agreed to meet the young people again before Christmas once they had submitted

their response to his consultation and he invited them to submit evidence on the impact of stage 1 of the transparency reforms and especially on the role of social media.

Council members were invited to provide Caroline any comments they may have to this Consultation by Monday 27 October. The President will look through the responses to this Consultation after the FJC debate on 11 November.

#### **4. Advice to the Family Justice Board (FJB) on FDAC (Paper 4)**

Caroline Little has also been working on the Council's advice to the FJB on FDAC for consideration at their December meeting. The Executive Committee took the decision at its September meeting that the Council should submit advice on FDAC. Angela Joyce is the DfE lead for FDAC. It was acknowledged that for FDAC to be rolled out to other areas this would require significant funding and a greater input from local authorities on how the FDAC model would be implemented in their area.

In addition to the central London scheme there are now schemes, with local variation in Gloucester and Milton Keynes and Buckinghamshire. The President at his last conference asked of all DFJs to report at his next conference in May 2015 on what plans they have to implement the FDAC model in their area. The DFJ would have a huge part to play in setting up an FDAC model in their area and getting local authorities involved. The London FDAC team have been engaging with as many local authorities as possible with regards to FDAC. Edward Timpson MP seems positive on the use of FDAC.

It was acknowledged that setting up an FDAC model in areas of a more rural nature was far more challenging as it is more difficult to have regular meetings. Furthermore some areas would require more training than others due to a lack of expertise in dealing with FDAC cases. Any FDAC model that is set up throughout the country would need to demonstrate value for money due to the costs involved in setting it up.

Malek mentioned that FDAC is not available across all of London and he and colleagues have had cases which would be suitable for the FDAC route if FDAC was running in the area in question. It was suggested that the FJC could recommend to the FJB that FDAC should be available across the whole of London. FDAC is currently being set up in West London. It was also suggested that when presenting FDAC to the FJB they could be encouraged to feed this down to the Local Family Justice Boards for them to consider.

There was concern that a lot of cases suitable for pre proceedings were also suitable for FDAC so there could be a challenge of what route the case should go under. This could potentially conflict with the Pre Proceedings Protocol as FDAC is solely proceedings.

Papers for the FJB December meeting need to be submitted by 21 November. Pauffley J invited and encouraged members to send any comments to Caroline within the next two weeks.

## **5. FJC debate 2014**

All four speakers are now confirmed – Sue Berelowitz, Dr Julia Brophy, Mr Justice Newton and Baroness Tyler. The event has been advertised on the Council’s web site and 65 applications to attend the event have already been received. A short discussion emerged as to why a greater number of delegates could not attend the FJC debate. It was thought that by keeping this to a set number ensures a higher quality Q&A. There was also the venue capacity to consider. It was agreed that for the 2015 FJC debate this could be revisited to determine whether a bigger venue and audience size is more appropriate.

## **6. Update on FJC business plan (Paper 5)**

On the FJC business plan, activities one & two were to be shortly discussed under the relevant agenda topic.

On activity three, ‘Guidance & Support for Litigants in Person in Private Law Proceedings’ the work due to be carried out by Advicenow was delayed due to obtaining the relevant financial clearance. This has now been resolved by Judicial Office and as with previous guides it is expected that Advicenow will be able to produce high quality materials with input from the FJC. Joe Murphy mentioned that Simon Hughes was due to make an announcement with regards to LiPs.

<https://www.gov.uk/government/news/more-support-for-separating-couples-and-parents>

Cobb J mentioned that Simon Hughes MP was due on 21 October to speak on the subject of LiPs to an All Parliamentary Group organised by the Magistrates’ Association.

On activity five, ‘Enabling feedback for judges, magistrates and legal advisers on the outcomes for children and families of the decisions they make in public law proceedings’ Professor Judith Masson has promised to produce something by the end of November where it is hoped this can be discussed at the next Council meeting. An article will be produced for Family Law based on the Council’s views.

On activity six, ‘Improving access to research relevant to family proceedings for practitioners and judiciary’ the President would like a publisher such as Jordan’s to consider whether they would be interested to publish a digest of medical research evidence relevant to family proceedings. Jordan’s have been approached and whilst they showed a lot of enthusiasm towards this at first, this has recently waned. It was suggested that Greg Woodgate from Jordan’s should be invited to the next Council meeting to discuss this.

Activity seven was also due to be shortly discussed under the relevant agenda topic.

## **7. Law Commission project on financial years (Paper 6)**

The Financial Needs Working Group has met twice and a drafting sub-group is now pulling together what will be version three of the guide which is intended, primarily, for litigants in person and a lay audience. The next meeting of the Working Group will take place on 18 November and the Chair hopes that they will be able to sign off the guide. The Executive Committee and the President will then be asked to approve the guide before submission to

the MoJ. Anne Barlow a member of this working group mentioned how the group worked very well together on such a challenging area of work. The final version of the guide will be accessible both online and in hard copy. Alex noted that the draft guide has been circulated to Practitioners outside of London in order to obtain a regional variation.

#### **8. Vulnerable witnesses working group (Paper 7)**

The Working Group met on 7<sup>th</sup> October and the Council has been asked to feed in views on the content of proposed Practice Directions on judges seeing children, children giving evidence and vulnerable witnesses. Malek and Caroline are members of the Working Group. Malek made reference to the Nagalro Conference entitled 'Hearing the Voice of the Young Victim of Sexual Abuse' which was held on 6 October. One of the presentations at the conference was how in criminal cases there were examples of good quality evidence being gathered from children as young as 24 months old.

Joe Murphy mentioned that Simon Hughes MP was keen for the child to have a greater voice. It would need to be established in family cases what structures are available to determine how best to get the child to communicate. Dr Heather Payne and Dr Liz Gillett will provide a short paragraph to Malek on this.

The question arose about the availability of data on how many children were seeing the judge in their case. From the 1 November Cafcass will be including this information in its case management system so they will soon be able to reflect national practice for their information.

Caroline reiterated what she said earlier that as this has a cross over with the transparency agenda this would need to be discussed further due to the vulnerability a child may feel towards information about their cases being placed in the public domain. Caroline and Malek will liaise on this.

Mark Andrews raised his concerns on the draft guidance and queried what the guidance was aiming to achieve. By establishing this, it would make the drafting of the Practice Directions a lot smoother. Malek would feed this back to the working group.

Some of the Council members reported that they received good feedback on the existing guidance. Some judges had concerns e.g. this was raised in a recent report in Wilshire. The Young Peoples' Board have been carrying out a number of visits around the country where this is discussed. This working group comprises of two members from the Young Person' Board. Cobb J pointed out that the Child Arrangements Programme (CAP) makes reference to this guidance and thinks it is working well. Every private law ticketed judge who had to take the CAP training was encouraged to refer to this guidance.

The next working group meeting is to take place in the first week of November

## **9. Mental capacity guidance (Papers 8, 9 & 10)**

Pauffley J expressed her thanks and gratitude for the work done on this guidance by DJ Gordon-Saker and Malek. There will be a more user friendly leaflet to accompany the existing leaflet to this guidance. This is to be financed by the MoJ who will liaise with their communications team on this.

The public law documents are with the MoJ and Official Solicitor for final comment before they go to the President. Both the public law and private law guidance will be issued at the same time despite different audience targets. Publication is likely to take place in late 2014 or early 2015.

Concerns were raised over whether the English used in the leaflet would be clear enough for as many as possible to understand. It was suggested that Advicenow could be approached due to their expertise in producing plain English guides. There were also concerns whether everyone would be able to access this online. It was felt that further contact details needed to be made available for access to this leaflet.

Bridget Lindley whose last Council meeting this was then had to leave the meeting. The Chair and the Council thanked her for all the excellent and valuable work and input she had made to the Council and wished her all the very best.

## **10. Consultation on financial remedies (Paper 11)**

The Financial Remedies Working Group, co-chaired by Mostyn and Cobb JJ, has published its consultation paper on streamlining procedures in money cases. DJ Liza Gordon-Saker has agreed to leading on framing the Council's response with the help of some members of the former Money & Property Committee. FJC members were invited to submit their comments to DJ Liza Gordon-Saker.

## **11. Joint FJC/BPS consultation on standards for psychologists**

The joint FJC/BPS consultation paper on standards for psychologists was published on 26 September and will run until 14<sup>th</sup> November. The Council is invited to submit a response. Pauffley J expressed her gratitude and thanks to Liz and Heather for the enormous amount of work that they have put into this project involving as it has long, patient and, at points, challenging negotiations with the BPS. Heather was looking to receive from relevant Council members legal comments on this consultation. Mark asked whether the LAA had been engaged on this especially with reference to appendixes 2 and 4. Liz mentioned that they have been trying to engage with the LAA for the past three years but without success. Discussions will need to take place at some point with the LAA with regards to costs for exceptional circumstances as highlighted in the consultation.

## **12. Closing Remarks**

HHJ Marshall brought to the attention of the Council a HMCTS document she was sent with regards to uncollected court fees upon an application to the court. The guidance seemed to have a wide ranging interpretation of what counted as an application to the court. The danger here would be the potential costs involved for those making the applications including local authorities. Cafcass it was thought was exempt under this guidance. HHJ Marshall would forward this guidance to Alex Clark who would make enquires and seek greater clarify on this guidance with HMCTS colleagues.

Angela Joyce informed members that Section 11 of the Children and Families Act 2014 has now come into law. Section 11 requires courts to presume that a child benefits from the involvement of each parent who can be involved in a way which does not put the child at risk of harm. This is subject to the principle that the welfare of the child must be the courts' paramount consideration. "Involvement" may be direct or indirect; it is for courts to determine the most appropriate way for a parent to be involved, in the light of the individual circumstances.

**Andrew Shaw**  
**President's Office**