



**Family Justice Council**  
**Minutes of the meeting held on 5<sup>th</sup> March 2012**

**Present:**

The Right Honourable Lord Justice Thorpe (Deputy Chair)

Mark Andrews, Justices' Clerk

Gillian Baranski, CAFCASS CYMRU

Annabel Burns, DfE

Bruce Clark, Cafcass

Martyn Cook, Family Magistrate

District Judge (Magistrates' Courts) Nick Crichton

Malek Wan Daud, Family Barrister

Nick Goodwin, MoJ

Christine Humphrey, Department of Health

District Judge Rachel Karp

Bridget Lindley, Consumer Focus, Parent Representative

Caroline Little, Family Solicitor Public Law

Dr. Heather Payne, Paediatrician

Alison Russell QC, Family Silk

Beverley Sayers, Family Mediator

Alex Clark, Secretary to the Council

Tessa Okposuogu, Assistant Secretary to the Council

Paula Adshead, Local Family Justice Council Liaison

Daphna Wilson, Family Justice Council Secretariat

**Apologies:**

The Right Honourable Sir Nicholas Wall (Chair)

Sue Berelowitz, Office of the Children's Commissioner for England

Dr. Elizabeth Gillett, Clinical Psychologist

HHJ Katharine Marshall

The Honourable Mrs Justice Parker

Deborah Ramsdale, Staffordshire County Council

### **1. Announcements**

Members recorded their best wishes to the President.

### **2. Minutes of the last meeting and matters arising**

The minutes of the last meeting were approved without amendment.

#### **Matters arising**

It was noted that the work of Dr. Heather Payne on page 3, para 8 of the minutes has been subsumed into the work being produced under Mr. Justice Ryder's modernisation agenda.

### **3. Family Justice Review**

Members were informed that the Government accepted the recommendation to set up a national Family Justice Board (the Board). The Board will have its first meeting in April 2012. It will be an executive body and it is hoped that the advisory function of the FJC will remain. The FJC agenda should be to work closely with the Board, with the details of the agenda being set following discussion between the FJC and the Board. Annabel Burns and Nick Goodwin are working on the details with their teams. It is envisaged that the current structure of standing sub-committees would be abolished, and replaced by time-limited working groups.

Some members commented that the merits of the current sub-committee structure are reflected by the dedication of the professionals who volunteer their time and expertise. Also some sub-committees are very effective, for example Children in Safeguarding Proceedings. A suggestion was made for consideration to be given to a hybrid of some standing committees and some subject-based committees. A number of members agreed with this proposition. It was thought appropriate to consider a way of striking a balance, especially as those who contribute to the work of the FJC receive little remuneration. By way of comparison, Alex Clark explained how work is conducted in the Civil Justice Council, with standing committees substituted by working groups. The expert groups became project-based groups, with the majority of work conducted by email. This structure would fit in more with the Board. Some members were concerned that such a change may make it difficult to maintain the interest and involvement of members. There was some discussion about the suggestion that the FJC's agenda would be set entirely by the Board. A number of important

pieces of work have come from members in the committees e.g. the Children Giving Evidence guidance.

More work is needed on the revised terms of reference, but it was noted that the Board would need to be involved in this. Some members commented on the effective use of working groups on the Criminal Justice Board and the absence of any difficulties in recruiting members for those groups. Members stressed the importance of maintaining links with key stakeholders such as the DoH, and there was some discussion about the FJC's future role in commissioning research. It was noted that the Board is likely to prioritise research projects in order to obtain value for money. Further discussion on research between the Board, the MoJ and the FJC would be necessary.

#### **4. Mr. Justice Ryder and the Modernisation Agenda**

Members noted the contents of the updating paper circulated before the meeting. Members were informed that the MoJ were drafting a Memorandum of Understanding with the Judiciary. The Board will be set up in April and at that stage the timetable for setting up the local family justice boards will be addressed. It was thought likely that the local boards could be in place before the summer of 2012.

#### **5. FJC Debate**

Members noted Professor Cooper's article summarising the debate. Members discussed the ongoing problems faced by inexperienced judges and magistrates making difficult decisions on the use of experts. Some members reported that there was a working group, involving the Judicial College, addressing the issue of strengthening judicial confidence in dealing with experts in court. Some members noted how judges in the Family Drug and Alcohol Court are able to develop an area of specialist knowledge within drug and alcohol cases which assists greatly with effective decision-making. There is also some overlap with judicial continuity. Members wished to highlight this training issue for the Judicial College.

#### **6. Publications**

A number of recent FJC publications were highlighted for members. This is also addressed in the Report from the Committees.

- ***Children in Families Committee*** – Professor Liz Trinder's article on Chronic litigation in private law proceedings in December 2011 Family Law and FJC website; an article by Jane Craig on the proposal for a scoping study for a Parent Co-ordination pilot, due to be published in March 2012 Family Law

- ***Working Party chaired by Thorpe LJ*** – Guidelines in relation to Children Giving Evidence in Family Proceedings in January 2012 Family Law and FJC website; an article by Alex Verdan QC due to be published in Family Law in March 2012 shortly
- ***Working Party chaired by Hedley J*** - MARACs (Multi-Agency Risk Assessment Conferences) and disclosure into court proceedings, in February 2012 Family Law and FJC website and circulation through CAADA (Co-ordinated Action Against Domestic Abuse) to the MARAC Co-ordinator networks
- ***Domestic Abuse Committee*** – Protocol for Process Servers on FJC website with wider circulation ongoing
- ***Experts Committee*** – Guidelines for the Instruction of Medical Experts from Overseas in family cases, published on FJC Website with wider circulation ongoing

## **7. Business Plan**

Members considered the updated draft business plan. It was noted that where appropriate, reference should be made to working with the Welsh Government.

## **8. Research Projects**

The Executive Committee would like there to be a segment at the Highgate Conference on research. The MoJ would also like to use this opportunity to highlight some recent research. Members were informed that the President has given his approval, in principle, to the proposed research by Professor Judith Masson.

## **9. Interpreters Paper**

The MoJ has launched a new system for the use of interpreters. Malek is awaiting some draft guidance from HMCTS which he would like to discuss with the members of the Diversity Committee.

## **10. Cross-Jurisdictional Protocol (VoC)**

Members of the VoC committee have been working closely with the President of the Upper Tribunal Immigration and Asylum Chamber, Mr. Justice Blake, who is supportive of an information sharing protocol between the immigration and family jurisdictions. The Committee is currently preparing a draft protocol, which has been sent to lawyers in the MoJ for consideration. Progress is being made on draft guidance on family issues for immigration judges.

## **11. LSC expert witness fees**

The draft paper on an alternative fee structure was submitted to the LSC by some members of the Experts Committee, but this was put on hold pending the outcome of the legal action brought by the Consortium of Experts. The LSC cancelled the last meeting and this is yet to be re-scheduled.

Members considered that it would be helpful to find out if there have been reports of any delays in court proceedings due to fee-capping; the number of requests received for prior authority, and the number of requests granted. Some members were aware of regular delays occurring for this reason.

Members were asked to send their views to Dr. Heather Payne. It was noted that the descriptions of professions is incorrect, for example the reference to a Child Psychologist, when this profession does not exist. It was further noted that the court delays posed the most urgent problem.

## **12. Reports from Committees**

### **Executive**

The Committee has held a number of extraordinary meetings to address the work requested by Mr. Justice Ryder for the Modernisation agenda. Members of the Committee met with Ryder J on the 9<sup>th</sup> December, with a follow-up meeting on the 21<sup>st</sup> December 2011. Despite the very tight timetable, members submitted proposals on a number of areas including Litigants- in- person, Mediation, Family Group Conferences and early parental engagement, Experts and Information Management, in February 2012. In addition, the Committee considered applications and recommendations from the FJC Projects Committee, on three research proposals. These will be addressed in the main FJC agenda on 5<sup>th</sup> March 2012.

### **ADR**

The Committee has not met since the last meeting of the Council. Out of Committee, members have submitted proposals, in response to Ryder J, on the use of Mediation in family proceedings. The Chair of the Committee added that the members have also contributed to the '*What the Family Courts expect from Parents*' and '*What Parents can expect from Court*', documents with the Parents and Relatives Committee.

### **Children in Families**

The Committee has met on one occasion since the last Council meeting. The findings of the Hunt and Trinder research on Chronic Litigation in private law proceedings, has given rise to a proposal for a scoping study for a Parent Co-ordination Pilot, similar to the framework in the US. This proposal is yet to be approved by the President, however two articles were

published in Family Law highlighting the pilot: an article by Prof Liz Trinder, published in December 2011, and an article by Jane Craig, due to be published in the March 2012 edition.

### **Children in Safeguarding Proceedings**

The Committee has met on one occasion since the last Council meeting. Out of committee, members have responded to a request for information by the DfE on the review of Regulations and National Minimum Standards governing residential assessment family centres. In addition, in response to a request by Ryder J, members submitted a paper commenting on the latest version of the Cafcass Operating Framework. The paper '*Guidelines in relation to Children Giving Evidence in Family Proceedings*', produced by the Working Party chaired by Thorpe LJ, was published on the website, and in Family Law January 2012. Alex Verdan QC has written an article, due to be published in Family Law shortly.

### **Diversity**

The Committee met with Local FJCs from the South West to explore diversity issues on a wider geographical basis. It continues to look at the effects of forced marriage legislation and is looking to compile statistics on the uptake of forced marriage applications/orders, their geographical spread and the number of orders in care proceedings. It continues to consider the pros and cons of a BME experts' database. A meeting was held with HMCTS to discuss the points raised in the Interpreters paper.

### **Domestic Violence**

The Committee has met on two occasions since the last Council meeting. The papers, '*Protocol for Process Servers*' and '*MARACs and disclosure into court proceedings*', have been published on the website and circulated to members. Wider circulation is ongoing, with the MARAC guidance having been published in the February 2012 edition of Family Law. Professor Rosemary Hunter's research on fact-finding hearings is ongoing, and due to be completed in April 2012. Members are considering a response to the Home Office Consultation on a revised definition of Domestic Violence, including addressing the narrow definition of the exception for domestic abuse in the Pre-application Protocol. Members would like to consider risk-assessments in the public and private law arena, in light of the recommendations of the FJR, with a view to producing best practice guidance for the court.

### **Experts**

The Committee has met on one occasion since the last Council meeting, where members drafted a paper in response to Ryder J's request for input on the use of Experts in family proceedings. The '*Guidelines for the Instruction of Medical Experts from Overseas in family cases*' has been published on the website and circulated to members. Wider circulation is ongoing. Professor Jane Ireland's report, '*Evaluating Expert Witness Psychological Reports*:'

*Exploring Quality Standards for Family Courts*, was submitted for MoJ peer review. The review was completed in February 2012. On completion of the final version of the research, a date for publication will be agreed.

### **Money and Property**

The Committee has met on one occasion since the last Council meeting, in addition to working out of committee. Members have produced a final draft of the guidance on Financial Dispute Resolution hearings. It is hoped that members will decide how best to take this forward at the next meeting in March.

### **Parents and Relatives**

The Committee has met on one occasion since the last Council meeting. Out of Committee, members have submitted papers to Ryder J on Family Group Conferences and proposals for early parental engagement in family proceedings. The draft guidance papers, *'What the Family Courts expect from Parents'* and *'What Parents can expect from Court'*, are being circulated to a number of committees for comments and amendments.

### **Voice of the Child**

The Group proposes to issue a protocol on information sharing between the family and immigration courts as informal guidance. The Group is currently finalising the draft protocol and its assorted forms. The Group is exploring issues relating to Special Educational Needs and the idea of a protocol between the family courts and the SEN Tribunal. It is also looking to get further evidence on guardians' practices regarding Article 12, the child's right to be heard. Lord Justice Thorpe commented that the guidance produced by the VoC Committee on Judges speaking to children and circulated to Judges in April 2010, was recently used in a Court of Appeal case which should be released shortly.

## **13. Local FJCs**

North Wales had raised concerns about police information-sharing. They have for some time had a protocol to obtain police information for child protection purposes. However when information is sought from other police forces those forces may insist upon compliance with their own local disclosure protocols which cause additional delays to proceedings.

They asked that the National FJC look at the question of the police having one disclosure policy for England and Wales rather than one for every police area.

Bruce Clark confirmed that a Cafcass/ACPO protocol has been in place since 2006 and was being replaced by a new Home Office Protocol on the 2 April 2012.

Warwickshire and Coventry have reached the interim point of a pilot project “Pre-Proceedings Pilot: pre-birth assessment and a ‘head-start’ for the Family Court Advisor” aimed to introduce Family Court Advisers into pre-proceedings work. A summary of the pilot was produced by Dr Karen Broadhurst of Lancaster University and circulated to members. Members raised a number of questions about the pilot and Bridget Lindley offered to contact Dr Broadhurst to discuss further.

#### **14. Any other business**

Some members suggested that the issue of Communications should be addressed. Members noted that the FJC no longer has a Communications officer, and would like some consideration to be given to updating the FJC web links on search engines, and publishing a quarterly update on the work of the FJC in Family Law. Alex Clark is exploring the possibility of recruiting a new Communications officer to cover both Civil and Family Councils. He emphasised that the present resources in the Secretariat are limited, and may be subject to further change once the new Board is operational.

Members discussed the upcoming local FJC Conference at Highgate House on 29<sup>th</sup> and 30<sup>th</sup> April. It was agreed at the recent meeting of the Executive Committee that this Conference should proceed, and be used as an opportunity to discuss the proposed changes with the local FJCs and with the local performance improvement groups (LPiGs). It is hoped that the Chair of the new Board will attend. Some members discussed ideas about using small group sessions at the Conference to encourage positive discussions about new ways of working at the local level.