



Family Justice Council
Minutes of the meeting held on 29th April 2012
Highgate House, Creaton

Present:

The Right Honourable Sir Nicholas Wall (Chair)

The Right Honourable Lord Justice Thorpe (Deputy Chair)

Mark Andrews, Justices' Clerk

Professor Anne Barlow, Professor of Family Law & Policy, University of Exeter

Martyn Cook, Family Magistrate

District Judge (Magistrates' Courts) Nick Crichton

Rhian Davies, CAFCASS CYMRU

Dr. Elizabeth Gillett, Clinical Psychologist

Jo Gordon, Judicial Office

Fiona Green, Cafcass

District Judge Rachel Karp

Bridget Lindley, Consumer Focus, Parent Representative

Caroline Little, Family Solicitor Public Law

HHJ Katharine Marshall

Karen Morgan-Read, FCO

Dr. Heather Payne, Paediatrician

Deborah Ramsdale, Staffordshire County Council

Alison Russell QC, Family Silk

Beverley Sayers, Family Mediator

Malek Wan Daud, Family Barrister

Jo Wilkinson, Assistant Private Secretary to the President of the Family Division

Alex Clark, Secretary to the Council

Paula Adshead, Local Family Justice Council Liaison

Daphna Wilson, Family Justice Council Secretariat

Apologies:

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

Annabel Burns, DfE

Nick Goodwin, MoJ

The Honourable Mrs Justice Parker

Julie Rogers, Welsh Assembly Government

Tessa Okposuogu, Assistant Secretary to the Council

1. Minutes of the last meeting and matters arising

The minutes of the last meeting were approved, pending the addition of Anne Barlow to the list of attendees.

Matters arising

Interpreters Paper: A new system for the use of interpreters was recently launched by the MoJ. Malek Wan Daud was awaiting an update on its progress and hoped to provide a report for the next FJC meeting in July.

3. LFJC/LPIG Conference programme

Members agreed that the programme content reflected the forthcoming changes to local arrangements. The Local Family Justice Boards Starter Pack, circulated to delegates, contained useful information and the conference should help answer any remaining questions.

4. Modernisation agenda: update

Alex Clark highlighted the issues that will require further FJC input. It is expected that the work streams will be collated and drafted into guidance for the single unified court by November 2012.

Discussions followed on the issue of research. It was felt that confirmation should be sought on the Council's role in research matters. The Council should be able to comment on the use of research from other organisations and avoid sole dependency on MoJ analysts.

5. FJC revised terms of reference and membership

The terms of reference were amended following the last meeting of the Executive Committee. It was agreed that the current version is workable and respects the

independence of the FJC. Its function to advise the Family Justice Board is made clear and whilst the Council will need to align its priorities with the FJB, its ability to raise the initiative is preserved. The FJC will be a standing item at FJB meetings.

Alison Russell stressed that the Council's role to highlight key cross-system issues for the FJB's considerations should be strengthened and the 'critical friend' role broadened to include government departments' priorities. It was important that the FJB sees the issues that the FJC is working on.

The Council's membership will remain largely the same in order to preserve its unique interdisciplinary nature. Ex-officios (MoJ, HMCTS, DfE, Cafcass, CAFCASS CYMRU and the Welsh Assembly Government) will be invited to meetings where the agenda requires their contribution. It was agreed that some refinements to the draft Terms of Reference should be made.

6. Revised structure of FJC sub-committees

The Council referred to a paper "Moving to a new structure and way of working". Alex Clark outlined a proposal to move away from the standing committee structure to a more project-based approach and time-limited working parties. The key issue is that the FJC has to fit into the new streamlined structure of the Family Justice Board.

This approach has been adopted by the Civil Justice Council and has resulted in an effective body which is more able to focus on specific priorities. Alex stressed the need for the FJC to make room for issues referred to it by the FJB, such as public law proceedings, litigants-in-person and experts. With the need to advise also on Mr Justice Ryder's modernisation programme and a reduction in FJC secretariat staff, there were insufficient resources left to continue supporting all the existing sub-committees. The decision has been made to wind up the Experts Committee but to call upon individuals when needed. This approach will be evaluated as it goes on and should be considered for other committees.

There were concerns that potential engagement would be lost as some members would not be so willing to help if there was no formal footing. Alex responded that on the CJC side, committee membership had been converted to expert 'banks' of which most were happy to be a part. It would be important to thank committee chairs and members and ensure that they understand that there was still a need for their expertise.

Options for the membership of the Executive Committee were considered, given the changes to the committees. It was suggested that members might put themselves forward and the Chair would make the final decision who would attend Executive Committee meetings. Alternatively, membership could be rotated.

It was acknowledged that it was difficult to agree a strategy until the Board's priorities were clear. Fiona Green mentioned the Family Justice Reform Programme (one tier down from the FJB) might shed more light. She would request a copy of its Business Plan for the next Executive Committee meeting in June. It was agreed to hold one more meeting of each committee until it was clear what was needed. Restructuring should be on the agendas of all committees, with a focus on priorities.

7. Business Plan

The draft business plan was agreed as fit for purpose.

8. Expert Witness Evidence

Heather Payne gave an update on LSC expert witness fees and cited examples of court delays caused by LSC delays in processing funding applications for prior authority. It was her view that Practice Direction 25 was not being followed. Following Professor Ireland's research, the FJC should show clear leadership on experts by issuing its own guidance. Heather has produced draft guidelines accordingly, along with a paper on potential future developments.

The LSC was keen to point out that it has quality assurance mechanisms in place and applications took an average of six days. High cost cases were identified as taking longer. Some solicitors were not applying in a timely manner. Heather will suggest changes to the categories of experts currently used by the LSC as it contains a number of inaccuracies and regular published updates on LSC standards and procedures. There should also be a mechanism for reporting delays.

The draft guidelines on experts were considered valuable and will be sent out for consultation. The target audience would include Local FJCs, professional bodies, Royal Colleges, paediatricians, child health experts.

Liz Gillett had circulated a draft proposal for an 'expert panel' to enable DFJs to have early access to expertise in the family courts and a copy of her presentation on choosing the right

expert which she intended to work up into an article for Family Law. It would be helpful to work on the expert panel, or triage, proposal as it was known that there was interest in the MOJ and DFE in the idea.

9. FJC Money and Property Committee's Guidance on Financial Dispute Resolution

Appointments

The guidance was welcomed and endorsed by the Council.

10. Cross-Jurisdictional Protocol (Voice of the Child Sub-Group)

The immigration judiciary no longer wished to support the current version of the draft cross-jurisdictional protocol for information sharing. They have instead opted for a more informal approach. Lord Justice Thorpe agreed to speak with Mr Justice Blake to ascertain a possible way forward.

11. Reports from the Committees

Executive

The Committee has held a number of extraordinary meetings to address the work requested by Ryder J in his Modernisation agenda. Members of the Committee met with Ryder J on the 9th December, with a follow-up meeting on the 21st 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. The Committee last met on the 26th March 2012, to discuss the FJC revised terms of reference, business plan, the proposed structure of the FJC sub-committees, and the plans for the LFJCs Conference at Highgate House.

Alternative Dispute Resolution

Work has continued out-of-committee. It has commented on the draft guidance 'What the Family Courts expect from parents when they disagree about arrangements for their children' and its sister guidance on 'What parents can expect from court when they disagree about arrangements for their child' has been prepared by the Parents and Relatives Group. The committee's work has Pre-Proceedings Group - a time limited working group currently moved over to the new.

Children in Families

The Committee has not met 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 Parenting Co-ordination Pilot, similar to the framework in the US. Prof Liz Trinder published an article in Family Law in December 2011 highlighting the proposed pilot. The proposal will be discussed at its meeting on 29th April.

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 a sub-group chaired by Thorpe LJ, was published, and in Family Law January 2012. Alex Verdan QC has written an article, published in Family Law March 2012. The Chair and some members of the Committee attended a meeting organised by the DfE, to discuss proposed guidance on child development for the judiciary and family justice professionals to be written by Professor Harriet Ward from the Childhood Wellbeing Research Centre and commissioned by the DfE. A steering group has been set up to draft the guidance by 3 May, which will be followed by a two-month consultation period. The President will be asked to write the forward.

Diversity

The Committee continues to look at the effects of forced marriage legislation. It has also produced a response from a diversity perspective to the consultation on the domestic violence disclosure scheme and commented on the draft Cafcass Operating Framework. Following the introduction of the MoJ's new interpreter scheme, the Committee will be seeking further information and official feedback on how it is working. Thought has also been given to how best to publicise the work of the FJC and the Diversity Committee in the future. Initial ideas included updating links to the main search engines and providing comprehensive guidance on its activities.

Domestic Abuse

The Committee has met on one occasion since the last Council meeting. Professor Rosemary Hunter's survey on fact-finding hearings has been completed. Her report will be presented at the Highgate House Conference at the end of April. Members submitted 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. The Committee was also working on a best practice guide on risk assessments and litigants-in-person, which will be circulated to other committees.

Experts

The Committee has not met since the last Council meeting. In anticipation of the proposed re-structuring of the FJC Sub-Committees, the Committee has changed its way of working. Members will be asked to contribute to project-based working groups as and when their expertise is required. Dr. Heather Payne will be discussing one such project under the agenda item on Expert Witness Evidence at the Council meeting on 29 April 2012.

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. This has been submitted to the Council for approval and will be discussed at the meeting on 29 April 2012.

Parents and Relatives

The Committee is due to meet on the 24th April 2012. 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. Members are currently working on an information leaflet for court users entitled 'Your rights as a parent/carer'.

Voice of the Child

The Group is considering how to progress following indications from the immigration jurisdiction that they are not willing to go ahead with the protocol in its current form. It is also exploring issues relating to Special Educational Needs and the idea of a protocol between the family courts and the SEN Tribunal. The Group is looking at the duty of care to vulnerable children once they had left UK borders and will also be writing an article for Family Law on guardians' practices regarding Article 12, the child's right to be heard. A proposal for a Family Justice Young People's Board has been drafted in the wake of the Government's response to the Family Justice Review. This will be the responsibility of the DfE, using the Cafcass framework. Cafcass will fund for one year.

12. Any other business

Parent coordination pilot for chronically litigated private law cases: Liz Trinder's proposal for a scoping phase was put to the Council. Martyn Cook explained that this study was being proposed before a full pilot was launched. The Council discussed funding the project but it was agreed that while the proposal had considerable merit, it could not be a priority for FJC funding in this financial year.

'What the Family Courts expect from parents when they disagree about arrangements for their children' this document is based on the expectation document currently used in the Midlands region. Members agreed that it would make sense to roll out a single version across the jurisdiction. The next steps would be to consult with HMCTS before the President's approval is sought. Its sister guidance 'What parents can expect from court when they disagree about arrangements for their child' has been circulated to other committees. It was suggested the guidance should include advice on interpreters for litigants-in-person. It has been tested, so far, on service users from the Parents and Relatives Committee but should be trialled on a wider basis. There were discussions on how the documents would be printed and distributed – court staff being the preferred option. This document will also need to be discussed and agreed with HMCTS before seeking the Presidents approval.