



Family Justice Council
Minutes of the meeting held on 15th October 2012

Present:

Mark Andrews, Justices' Clerk
Professor Anne Barlow, Academic
Sue Berelowitz, Office of the Children's Commissioner for England
Annabel Burns, DfE
Martyn Cook, Family Magistrate
Phil Douglas, Deputy Director, Judicial Office
Dr. Elizabeth Gillett, Clinical Psychologist
Fiona Green, Cafcass
Rebecca John, Cafcass
District Judge Rachel Karp
Bridget Lindley, Consumer Focus, Parent Representative
Caroline Little, Family Solicitor, Public Law
HHJ Katharine Marshall
The Honourable Mrs. Justice Parker
Dr. Heather Payne, Paediatrician
Alison Russell QC, Family Silk
Beverley Sayers, Family Mediator
Paul Stewart, HMCTS
The Right Honourable Lord Justice Thorpe, **Chair**
Sara Trikha, MoJ
Malek Wan Daud, Family Barrister
Alex Clark, Secretary to the Council
Joanna Wilkinson, Assistant Private Secretary to the President of the Family Division

1. Apologies:

Bruce Clark, Cafcass
District Judge (Magistrates' Court) Nicholas Crichton CBE
Nick Goodwin, MoJ

2. Minutes of the last meeting.

The minutes of the last meeting were approved. Members expressed a desire to receive minutes of the main Council meetings as soon as possible after those meetings to enable them to follow up action points. An Action point log would also be helpful. The minutes were approved without amendment.

3. Family Justice Board (FJB) meeting on 8th August 2012

Phil Douglas noted that the Family Justice Council work plan was well received by the Board. The Board had asked if the Council would be able to take on work on the development of outcomes and Ryder J had indicated that this would be possible subject to very specific direction as to the Board's requirements. Phil Douglas informed the Council that prior to the FJB meeting David Norgrove had met the Senior Presiding Judge and Mr. Justice Ryder and had been very supportive of the judiciary's proposals. He understood the need for momentum and culture change.

4. Judicial Proposals for the Modernisation of family justice

Members had received a list of the documents that fell to be drafted by the FJC. Alison Russell noted that most subject areas had been picked up. With reduced secretariat support, members would need to have a greater use of email. The Executive Committee will ensure that their minutes and action points are sent out swiftly after meetings so that all members are kept informed and have the opportunity to contribute to the work streams. The work will be distributed between the new FJC working groups, with the Executive committee in a project manager role. Beverley Sayers, co-chair of the Pre Proceedings Group noted that there were a number of areas in which it could contribute. Mrs. Justice Parker and Alison Russell are working on guidance on self representing litigants. Concerns were expressed about the number of groups working on guidance around self representing litigants and how effective they were likely to be. It was agreed that it would be helpful to pull everything together to know what was being done. The FJC was well placed to help with this work. Alex Clark observed that it was important to be clear about what was required. Material for Self Representing Litigants needed to be based on evidence and to have input from service users. Bridget Lindley noted that there were people available who could help on this and she would pass on the details. A MoJ project board has been put together to look at all the work going on and will be able to provide greater clarity. Mark Andrews thought it would be helpful for local areas to be contacted to provide details of what they were working on. Anne Barlow noted that there is or has been research in both Australia and the US regarding SRLs.

5. FJC Debate

The topic of this year's debate will be on sequential pregnancy cases in public law. There is a need to identify speakers and a motion for discussion. This will be a topical subject and members' attention was drawn to the judgment of the Court of Appeal in Re: J (Children) [2012] EWCA Civ380, which is to be heard in the Supreme Court on the 17th and 18th December, with judgment expected in January. Mike Shaw, who is well known to the Council, has been participating in a small study in Suffolk, which has identified that 25% of children removed under a care order are born to mothers who have had 3 or more children removed, and that in one third of cases, the mother became pregnant during existing care proceedings. Mike has suggested a number of possible speakers, whom Alex has approached. It is hoped to identify individuals from children's services, practitioners and experts. Members were asked to provide suggestions for the motion and speakers to Alex as soon as possible.

6. Working Group updates

Pre-proceedings in private law: the working group has identified a work plan and would meet again in early November.

Self Representing Litigants and risk assessments: this had already largely been covered in item 4 above. A working group is being established specifically to work on

SRLs in financial proceedings and on a response to the Law Commission Report on matrimonial property.

Public Law and workforce development

Liz Gillett reported that the group was awaiting further discussions with Joe Murphy of MoJ to provide more definition to the work expected from the group on workforce development. The Group was also working on the response to the Adoption and Fostering Consultation.

Experts – best practice and quality standards – update: Heather Payne had circulated a final draft of the standards for expert witness document and thanked members for all their contributions. She had also circulated a timetable for the consultation and approval process. The document would be a first step in improving quality, and supply and use, of experts. Much reiterates the content of Practice Direction 25A. Members were asked to provide Heather with any final comments by the 19th October, preferably in track changes. Other strands of work in relation to experts include work being done by the Law Society on letters of instruction and the Legal Services Commission about rates for experts. Heather queried the reference in the FJB minutes to the restarting of a currently suspended group of experts of the FJC being restarted. It was clarified that this was the Money and Property group who were looking at self represented litigants in money cases. It was agreed that Sara Trikha and Annabel Burns would supply a clarification.

Caroline Little reported that a judicial review application from the Experts Consortium concerning the London rates introduced by the LSC was going ahead. She also raised the concerns about accessing expertise in private law cases where both parties are in person. Many experts will not accept instructions from self representing litigants and this is perceived to be a major difficulty. While the standards document could not deal with this it could flag up these types of issues, and it might be possible to include a question in the consultation on acceptance of instructions from self representing litigants. Rachel Karp commented that in cases where both parties were self representing there was a growing use of rule 16.2 where the child was made a party to the proceedings without a guardian. This raised further problems as to whether solicitors were prepared to act.

Heather would welcome all these types of problems being raised so that they could all be included in the discussion. She said that the whole picture, including the use of experts should be raised. Heather intends that a resource should be produced which can be hosted on the FJC website. She mentioned that the question of delay in production of medical records was also being addressed. Liz Gillett is about to begin a dialogue with the British Psychological Society with a view to establishing a joint working group looking at professional standards among psychologists. The group was meeting later that day to agree terms of reference and she hoped that agreement on the way forward would be reached by the end of the week.

Mrs Justice Parker informed the Council that a small working group was being established to look at how SRLs in financial proceedings could be assisted and was considering the possibilities of producing a DVD or an App to assist them in the completion of Form E. This group will also be leading the Council's response to the Law Commission consultation on matrimonial property.

7. Child Development Guidance and plan for dissemination

Members had seen the research digest which was presented to the Council as the final version for information only. It had been previously circulated and all feedback

taken into account. Annabel Burns recorded her thanks to Liz Gillett for all her hard work in getting the digest produced. She said that the plan was to publish it electronically and it was intended that the Judicial College will use it as part of their training material. It may also be incorporated into the family court guide. She was happy to receive suggestions as to how it might be further disseminated and its use encouraged. In answer to queries raised by some members about omissions and use of language, Liz and Annabel explained that the first version had been much longer and decisions had had to be taken as to inclusion. The possibility of a Volume 2 which could include further items, particularly on evidence based intervention which had been outside the scope of this publication could certainly be considered. In response to the concerns of Sue Berelowitz about the use of the term 'promiscuity' among children, she explained that the wording used was that contained in the research and therefore could not be changed. The introduction to the digest set out the methodology. Annabel would take this back but could not be certain that a change could be made.

8. NSPCC research proposal

The NSPCC sought endorsement from the Council for a research proposal to develop a 'database' or 'list' of research evidence for use by judges. Anne Barlow had been asked by the Secretariat to look at the proposal. In principle this was a good idea but she considered that more information was required. The Council agreed, (as had the Executive Committee), as they were unclear exactly what the FJC's role would be. They were concerned about apparent limitations in the proposal and would welcome more detail. The Secretary would contact the NSPCC.

9. Cafcass consultation on the expansion of the Young People's Board

Fiona Green explained that the Young Peoples' Board will feed in to the Family Justice Board and she hoped that the FJC would wish to respond to the questions. Responses were required by the end of October, but would be accepted into November, although a paper was likely to be prepared for the FJB meeting in mid November. In response to a question from Heather Payne, Fiona will check the input of Cafcass Cymru into this work. Members were asked to send email responses to Alex by the 26th October.

10. Dartington Conference 2013

The theme of Access to Justice has been identified by the Executive Committee as being a topical and important one. By the time of the conference (September 2013) the LASPO Act will have been in force for six months and this will be an opportunity to look at the effects. The Council endorsed this topic and the planning group (volunteers for this have already been approached) will meet shortly to begin the work.

11. Any Other Business

Malek Wan Daud raised the question of the provision of interpreters in the courts. He reminded members that he had met Paul Harris from HMCTS last September and that a new interpreters' contract had come into effect from January 2012, following which there had been many complaints about the level of service. He understood that guidance for court staff had been delayed. He said that the three main interpreters' organisations were understood not to have signed up to the new contract. He would now set out feedback and suggestions for assistance on behalf of the Council. Paul Stewart said that HMCTS was aware that the system had not worked as anticipated, but that the issues were being worked through and performance was improving. HMCTS would be happy to receive comments and suggestions.

Bridget Lindley raised the question of hearing the voices of families in the Family Justice system on the FJB, as there is no distinct representative on the Board. Annabel commented that the FJC could provide that voice, but Bridget felt that this might be difficult. The Family Rights Group had not directly approached the FJB. This was an issue that she felt should be addressed.

The FJC would be responding to the call for evidence on the pre legislative scrutiny of the DfE bill. Sue Berelowitz informed the Council that the Children's Commissioner would be producing a Child Rights Impact Assessment on the Bill which would be made widely available.

Malek Wan Daud drew attention to the Muslim Marriage Group which had been organised by the MoJ. Owing to the summer Government reshuffle there had been a delay in getting submissions to Ministers but these were now expected to be dealt with in the next few weeks. He drew attention to the provisions of the Arbitration and Mediation Bill and the fact that research says that young professional Muslim couples are not registering their marriages.

Alison Russell QC updated the Council on the recent meeting of the Family Criminal Interface Committee. As part of the modernisation project guidance was to be drafted on concurrent procedures in crime and family. She is aware that there are many local protocols about disclosure in existence and this guidance is intended to be a distillation of basic information which can be incorporated into all protocols.

Heather Payne expressed her anxiety about the slow process of setting up the education & training sub groups of the LFJBs, as these were a key delivery area. Sara Trikha said that there were a range of communications going out to the LFJBs and this would be picked up as part of this.

Malek Wan Daud asked if the FJC website could be updated. Some links were missing and the list of members was out of date. Alex noted that the Council would shortly be commencing a recruitment exercise for a private law solicitor and a social work member. There is currently no private law solicitor member; a previous recruitment campaign having failed to appoint. The role description will be carefully looked at and consideration given to whether someone should be appointed who does money work in addition to children.

Caroline Little asked about information from the FJB and felt that greater transparency was required. Sara Trikha agreed and said that this was very much on the agenda of the Board. They would certainly share the terms of reference. It was agreed that the FJC should receive the information that goes to LFJBs.

The Chair noted that this was the first meeting of the Council since the President had announced his retirement.

The following statement was unanimously endorsed by the Council and will be placed on the FJC website:

The Council wishes to record its thanks to its Chairman and President of the Family Division, Sir Nicholas Wall, for his strong advocacy of multi-disciplinary working in the family justice system. Sir Nicholas has been at the forefront of the movement to promote multi-disciplinary working for many years and was a firm supporter of the establishment of the Council in 2005.

Sir Nicholas has been a great moderniser of the family justice system. He understood the importance and benefits of encouraging professionals to work together to improve

the quality of decision-making in the interests of children.

The Council regrets that Sir Nicholas's Presidency has been cut short by ill health but feels that the modernisation programme which he established will leave a fitting legacy of his reforming instincts and his commitment to promoting the welfare and best interests of children.