



**Family Justice Council  
Minutes of the meeting held on 15th July 2013  
Royal Courts of Justice, London**

**Present:**

**Mark Andrews, Justices' Clerk**  
**Professor Anne Barlow, Academic**  
**Sue Berelowitz, Deputy Children's Commissioner for England**  
**Alex Clark, Secretary to the Council**  
**The Honourable Mr. Justice Cobb**  
**Tessa Fyffe, Assistant Secretary to the Council**  
**Dr. Elizabeth Gillett, Clinical Psychologist**  
**Jo Gordon, Deputy Director, Judicial Office**  
**Fiona Green, Cafcass**  
**Bridget Lindley, Consumer Focus, Parent Representative**  
**HHJ Katharine Marshall**  
**Katherine McManus, DfE**  
**The Right Honourable Lord Justice Munby, President of the Family Division (chair)**  
**Joe Murphy, MoJ**  
**Dr. Heather Payne, Consultant Paediatrician (by telephone)**  
**Alison Russell QC, Family Silk**  
**Beverley Sayers, Family Mediator**  
**Malek Wan Daud, Family Barrister**  
**Daphna Wilson, Family Justice Council Secretariat**

**1. Announcements and Apologies:**

**Martyn Cook, Family Magistrate**  
**District Judge (Magistrates' Court) Nicholas Crichton CBE**  
**John Hall, MoJ**  
**HHJ Rachel Karp**  
**Caroline Little, Family Solicitor, Public Law**  
**The Right Honourable Lord Justice Thorpe**

Members noted that this is the last FJC meeting before Lord Justice Thorpe retires and wished to extend their gratitude to him for his huge contribution to the setting up and work of the Council. Members welcomed Mr. Justice Cobb to the Council, as this is his first meeting since his appointment.

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

Amendments:

Beverley Sayers was present at the last meeting and informed members that the pre-proceedings working group will now be known as the Dispute Resolution Services group. It should also be recorded that a sub-group has been considering the question of screening, with a view to producing a standardised screening tool, influenced by research from Australia.

HHJ Marshall's comment under Action 2 on page 3 should be amended to read, 'HHJ Marshall suggested that there should be a form on each private law case file, where the court has decided that an expert is necessary, and one was not provided, for an explanation to be given as to why an expert was not used in that case.'

The minutes were approved without further amendment.

Matters arising:

- Expectation documents: Katherine McManus explained that the FJB had decided to put the expectation documents on hold, until after the PLO pilot has concluded. Bridget Lindley expressed concern over the absence of the area of pre-proceedings within the expectation documents. The President explained that the documents prepared were unsatisfactory. He recognised that a lot of work had been done, but there is no complete set of documents that the President is prepared to sign off. Much of the content in the draft expectation documents has been put into the PLO. Cafcass and the ADCS have recently published guidance on the revised PLO which the President has agreed.
- Bridget Lindley noted that with the changes to fostering and adoption, families need to be involved very quickly in proceedings. HHJ Marshall commented that the DFJ's are working with local authorities on a protocol. Those on the Western Circuit follow a reasonably standard template. She will forward a copy of the template to Bridget Lindley ahead of her meeting with the President next week. The President invited Bridget to consider the latest protocol, which he believed to be Judge Wildblood's version, and consider the reference to family and friends' carers.
- LiPs: Alison Russell QC confirmed that the report of the cross-jurisdictional group has been published. Advicenow is starting work on two guides for LiPs.
- Alex Clark reported that he had received positive feedback on the Council's response to the Transforming Legal Aid consultation, and the consultation on fees. Joe Murphy reported that the workstream on workforce development had been taken over by the PLO pilot and local training.

## **3. Update on Expert Witness workstream, including NHS Protocol on Disclosure (item 2) and Medical Digest (item 7)**

- Experts standards consultation: A final version of the FJC Standards for Expert Witnesses document went out to consultation on 16 May 2013, and closes on 18 July. Responses have been overwhelmingly positive to the concept of standards and there will probably be only minor modifications required. MoJ will process the consultation responses and produce a report. A piece of work will be required to finalise the document in light of this at relatively short notice. Dr. Heather Payne noted that it would be useful to have a small group to assist with the final drafting before the document is submitted to the President.

It would also be helpful to have a clear handling process in place – will the standards be appended to a practice direction and have the same force? The President noted the important question of implementation. Once the document is submitted to the President, he will be invited to consider whether he wishes to give effect to the standards through President’s guidance or through practice directions. The President believed that this exercise could be undertaken in conjunction with the amendments required to the Experts Practice Direction published in January.

-Joint FJC and British Psychological Society Working Group: This is co-chaired by Dr Liz Gillett and the BPS lead, working to embed the Expert Witness standards into psychological practice. A first draft is in preparation and the next meeting is due to review and discuss this. Work is on schedule to report at the end of 2013. Liz Gillett explained that the draft is in 3 separate documents and once pulled together will be reviewed by Alison Russell and HHJ Marshall for legal input. At that stage, it will be possible to discuss implementation. For psychologists, there is no GMC -equivalent body, so a number of psychologists are not accountable to a professional regulatory body because they are academics. Heather Payne emphasised the problem of registration with professional bodies, and the absence of a mechanism for imposing sanctions. Liz Gillett noted that the group is likely to meet in early September, but the draft will be circulated in the next couple of weeks for members to consider over the summer. The President commented that it might be appropriate to have a provision in the Practice Direction, directing the use of a protocol for a particular profession, if one is available.

- Protocol for release of medical records by GPs and Hospitals: The final draft has been submitted to the President. The document contains a checklist helping the court identify names, which of the multiple sources of health records are required, and timescales for release. It also contains a reminder for health organisations about the legal framework for consent, and the need to avoid delay when records are required for family court purposes. Heather Payne invited comments from members. Sue Berelowitz asked how this document fits with the forthcoming CPS protocol. The President explained that he addressed this in his fourth article in the ‘View from the President’s Chambers’ series. There will be 3 protocols namely, police, CPS and NHS. It is vital that these are national protocols, but the question remains on who will sign off for the NHS? Perhaps the DoH can assist? However, a protocol that invites people to disclose documents will not work. Any order must state that the person ‘shall’ disclose a document, and provide an explanation of contempt of court. Sue Berelowitz understood that the DoH have little influence with GPs, and it may be a case of approaching the NHS Commissioning boards. Members suggested involving the FJB and GMC. Mark Andrews suggested that this should not be referred to as a ‘protocol’, as this suggests agreement, and there would need to be a facility built in to the order to allow the medical practitioner to request non-disclosure if it is in the best interests of the patient. What about agencies who are commissioned by the NHS? How does this tie those agencies in? Alison Russell explained that attempts were made to address agencies as well as health professionals in the protocol; however the phrases ‘primary’ and ‘secondary’ health care were thought to be more appropriate. Members agreed that it was important to address the order to the right medical professional, which can often be difficult. Members agreed that this should be a practice direction, as opposed to a protocol, and the ‘teeth’ should be contained in the court order. It is important to convey to those holding the information, what they have to do. This is a change in culture and it would be helpful to advertise this in the professional journals.

- FPC Bench Book chapter on Experts: Comments and proposed amendments to this chapter were submitted to the Judicial College as requested, which should reflect the changes mentioned above - standards statements, documents release, and a focus on the expert's instruction. This should lead to better quality instructions and briefer expert reports.

-Multidisciplinary discussion sessions: A joint training session has taken place, organised with CAF/CASS Cymru and HMCTS in the Gwent LFJB area. This was a successful afternoon session which used multidisciplinary review (paediatricians, psychologists, judiciary, and solicitors) of a 'dummy' expert report to perform 'critical appraisal and peer review' of the process. The feedback was positive and further sessions have been organised in all the other LFJB areas for September 2013. The idea will be to have regular (probably quarterly) peer review sessions of this nature to engender multidisciplinary discussion on actual cases and experiences – this will constitute a version of the continuing professional development for experts envisaged in the standards for experts. It should also provide approved CPD for the judiciary and lawyers- this would need to be taken forward with the relevant professional bodies. It is a highly cost efficient form of CPD, could be a cardinal feature of LFJB training subgroup functions, and could lead to a greatly improved supply of experts. The 4 Paediatricians involved in the Pilot are not currently doing expert work but said they would consider undertaking it with this kind of peer group review and support. A report of the overall pilot will be produced for the next FJC meeting. A meeting will also be planned at the Academy of Experts in September or October in conjunction with London based experts.

-Digest of Medical Evidence possibilities: Discussions have taken place with a number of experts and academics about the possibility of developing a regular publication (along the lines of Personal Injury) which summarises current best evidence. To summarise most opinions, the problem with published papers is understanding their validity and generalisability, and resolving apparent conflicts. Only systematic reviews of evidence really meet the requirements for standards of evidence for use in the court. The Cardiff Systematic Review group led by Prof Alison Kemp (of which Heather Payne is a member) currently produces summaries of the research undertaken, including evidence based conclusions, and posts links to all the papers cited on the Core-info website. This has been funded by NSPCC in the past, but this may not continue and sponsors are being sought to continue publication. Prof Kemp would be interested in discussion of the possibilities of hosting the outputs of Core-Info, and sourcing further research funding. Other University departments including Warwick, Oxford and Imperial would also be key players, with work on childhood deaths, intensive care and metabolic medicine. Further discussion is planned with MoJ to see how this fits into the Research in Practice model and the MoJ information hub (which does not cover the same ground, being much less evaluative).

Heather Payne is willing to attend the meeting with Rebecca Endean and David Norgrove, if the President would find this helpful. Alex Clark suggested arranging a meeting with legal publishers to discuss the management of a project of this size. The President was of the view that this would be a 2 – 3 year project.

#### **4. FJC Debate 2013, 'Is mediation fit for purpose?' – planning update**

The Executive Committee endorsed the new date for the annual debate as the 5<sup>th</sup> November 2013, and endorsed the proposal that the subject matter should be mediation, as this is topical and there is a need to have some focus on private law. There was a suggestion that Professor

Anne Barlow be approached to assist the Secretariat with suggestions for possible speakers and general guidance in planning the debate.

### **5. FJC Interdisciplinary Conference – planning update**

Alex confirmed that the revised business case has been submitted to the MoJ for approval. Costs have been driven down considerably and the proposed venue is the Kensington Close Hotel. The Executive Committee, at its last meeting, endorsed the proposal to move the date of the conference to 7<sup>th</sup> February 2014. This would allow for a clearer picture on what was happening in private law cases to emerge. Alison Russell has prepared a draft structure for the day featuring parallel sessions. The Committee agreed this approach as the being the best available for covering a range of issues in only one day. It was agreed that as with previous conferences, speakers should be identified as far in advance as possible and asked to submit papers in advance which would be collated and circulated to delegates for reading before the conference. The Committee agreed that it would be helpful to have templates for reporting the conclusions from the parallel seminars to the plenary sessions.

### **6. FJC working groups**

Pre-proceedings: Beverley Sayers' referred to her paper circulated before the meeting. There is a sub-group focusing on developing a screening tool, and translating existing Australian evidence into something that can be used and added to the parenting agreement. She hopes that the work will get to a stage where a request can be made for judicial input. Professor Anne Barlow offered her services to the group, having had involvement with the research. Fiona Green noted that over the last 3 months there has been a surge in private law applications. The President commented that this did not tally with anecdotal feedback from the judiciary.

Beverley Sayers noted that the take up of mediation is falling. MIAMs will become compulsory next year. There is reference to this in the FJB minutes circulated. Some members acknowledged that the FM1 form is not always completed. The President asked what message the Council would like him to send to courts. Do not issue an application unless the FM1 is completed? HHJ Marshall shared the practice used in her area. The court staff offer the FM1 to a person seeking to issue an application. If the person does not complete it, there is a note for the judge from that member of staff. So the judge will have either the FM1 or the note. Anne Barlow urged that this work needs to be put together with the work of Advice now and that includes screening.

Beverley Sayers and Fiona Green invited more Judicial referrals to the SPIP programme. The President asked whether there was a sufficient geographical spread of available providers, as this may be the reason for a low number of referrals. Beverley Sayers was of the view that a person in England and Wales would rarely have to travel for more than thirty minutes to attend an available SPIP provider.

Litigants-in-person: Alison Russell provided an update on the work of this group under matters arising.

Litigants-in-person in financial remedy cases: Alex Clark provided an earlier update on the work of Advicenow.

Public Law and workforce development: This group will be meeting today to discuss terms of reference, workstreams and membership.

Experts: this update was provided at agenda item 3 by Heather Payne.

Risk-assessments: Alison Russell will have a draft document for the Council's meeting in October.

Research on Fact-finding hearings: Professor Rosemary Hunter is to be approached for proposals on how to take forward the findings of this research.

## **8. Interpreters**

Malek Wan Daud updated members on his work on interpreters. He circulated a paper dealing with the historical discussions with HMCTS. Malek has been working with Jo Wilkinson in the President's office and Adam Lennon in HMCTS, and agreement has been reached for HMCTS to use the FJC glossary produced by the former Diversity Committee. It will need to be updated. In addition, it is hoped that there will be draft guidance to target specific problems with interpreters. The President asked Malek to produce the draft guidance, working with other Council members where necessary, and submit for consideration of joint guidance from the President and HMCTS.

Malek noted that one of the helpful clarifications he has received about the use of interpreters through this dialogue with HMCTS is that there is still a provision for booking the same interpreter to be used in family proceedings. HHJ Marshall noted that a number of judges have been led to believe that this is no longer possible, and as such she would welcome circulation of this guidance to judges as soon as it has been completed.

## **9. FJB minutes**

FJB minutes will be a standing item on the FJC agenda at future meetings. The draft minutes of the meeting on the 25<sup>th</sup> June were circulated for discussion. It is hoped that the Council will have a role in co-ordinating research, and views were expressed to the President ahead of his meeting with Rebecca Endean and David Norgrove on the research programme. It was noted that Harriet Ward and Danya Glaser will be responding to the comments made about the publication 'Decision-making within a child's timeframe' in the September edition of Family Law. Members are content for FJC minutes to be circulated to the FJB.

Joe Murphy confirmed that the reference to work with experts on page 7 at para 33 is the attempt to take '*Bearing Good Witness*' further, and as such will be a longer-term piece of work.

## **10. Transparency**

The President issued a consultation document last week. Members were asked for their comments. Sue Berelowitz had concerns about the identity of children involved in proceedings being revealed. The OCC is happy to engage with the President and look at what appropriate safeguards can be put forward. The President invited the Council to submit a joint response. There is no formal deadline for responses but it would be helpful for the Council to submit its views by the beginning of the new legal year in October.

## **11. Public Law Outline pilot and online Family Court Guide**

This item is to highlight this pilot for all members. The online guide can be found at <http://www.judiciary.gov.uk/publications-and-reports/FamilyCourtGuide>

## **12. Any other business:**

Daphna Wilson reminded members that the FJC secretariat administers the mini-pupillage scheme for specialist registrars in the Family Division of the High Court. Specialist registrars are the expert witnesses of the future, and as part of their training they need to experience court proceedings. To assist them in gaining this experience, arrangements can be made for them to sit with a Judge of the High Court, a Circuit Judge or a District Judge either at a hearing in which relevant expert evidence is expected to be given, or if they wish, in other family hearings. Daphna will be approaching the judicial members of the Council to discuss this further. Members are encouraged to contact Daphna for further information.

Members were informed that the final submission for the appointment of the new Council members has been sent for ministerial approval.