



**Family Justice Council**  
**Minutes of the meeting held on 21st October 2013**  
**Royal Courts of Justice, London**

Present:

Mark Andrews, Justices' Clerk  
Professor Anne Barlow, Academic  
Sue Berelowitz, Deputy Children's Commissioner for England  
Christina Blacklaws, Private Law Solicitor  
Alex Clark, Secretary to the Council  
Martyn Cook, Family Magistrate  
John Daly, Assistant Director Children's Services  
Tessa Fyffe, Assistant Secretary to the Council  
Nicola Gilbert, DfE  
Dr. Elizabeth Gillett, Clinical Psychologist  
John Hall, MoJ  
Bridget Lindley, Consumer Focus, Parent Representative  
Her Honour Judge Katharine Marshall  
The Right Honourable Sir James Munby, President of the Family Division (chairman)  
Joe Murphy, MoJ  
Dr. Heather Payne, Consultant Paediatrician  
Dominic Raeside, Family Mediator  
Malek Wan Daud, Family Barrister  
Daphna Wilson, Family Justice Council Secretariat

**1. Announcements and Apologies:**

The Honourable Mr. Justice Cobb  
District Judge (Magistrates' Court) Nicholas Crichton CBE  
Alistair Davey, Welsh Government  
Rhian Davies, CAF/CASS Cymru  
Fiona Green, Cafcass  
Caroline Little, Public Law Solicitor  
Alison Russell QC, Family Silk  
District Judge Liza Gordon-Saker

Dr. Heather Payne chaired the meeting until the President arrived. Members noted that DJ Crichton will be retiring at the end of the year. The Council recorded their gratitude for the enormous and unique contribution made by DJ Crichton as a founding member. He is an innovative and inspirational person who will be sadly missed on the Council. Members discussed how they might mark this occasion.

## **2. Welcome to new members:**

The new Council members Christina Blacklaws, John Daly and Dominic Raeside were given a warm welcome by members.

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

The minutes were approved without amendment.

## **4. Transparency**

The President joined the meeting during this item. Caroline Little is leading on the Council's response to the draft consultation on Transparency. Caroline was unable to attend today due to court commitments. The President has received several responses, and would like to see a response from the Council, even if only a draft, by the end of this month. The President commented that the non-lawyer input would be more important at the present time, given the number of responses he has received from lawyers and the judiciary. A response that captures the views, perceptions and feelings of families would be helpful.

Sue Berelowitz would like to feed in the recent OCC study with young people involved in public and private law cases, where they were all in support of the protection of their privacy and identities in court proceedings. The study revealed that issues for children go further than just identity; it is also about 'their private stuff' and keeping their 'business' private. She will speak to Dr. Julia Brophy about this. Heather Payne would like the response to reflect the view of the expert witness, as there have been cases where some experts have not wanted to be identified. Christina Blacklaws noted that social digital media is the distinguishing factor between the transparency argument today and 2010. HHJ Marshall noted that the difficulties arise in smaller local authorities like Berkshire, where it may be easier to identify a child. Anne Barlow noted that this is a question she explores with her students at the start of term, where her students always vote for privacy over increased transparency. John Daly noted that in case reviews, children are given the option of anonymity. The President would also welcome views on the criteria to be applied for when a judgement should be redacted. Bridget Lindley noted that it may be useful to consider alternative ways to achieving transparency without publishing judgements, such as Heather Payne's suggestion of a thematic report which amalgamates selected details. Mark Andrews asked whether the President had considered the 'access to baby judgements' project, as it seemed to be viewed by lawyers only, with little or no interest from non-lawyers. Sue Berelowitz considered initiatives that would serve to increase public awareness of family courts such as the Family Court Open Days in London in 2009, co-ordinated by Inner London Family Proceedings Court in Wells Street. Christina Blacklaws suggested short videos on a number of court proceedings which can be posted on You Tube. The 17 short videos posted on You Tube by her team have had over 17,000 hits. HHJ Marshall urged all members to send their comments and arguments to Caroline Little as soon as possible. Members are on hand to assist, should they be required.

## **5. Triennial Review**

Members considered the review outline and project plan circulated. Tessa Fyffe informed members that the project team managers had recently met with the President, who confirmed that he wants the Council to continue to exist, in its current external form, to fulfil its key functions, as set out in its terms of reference. The project team hope to circulate questionnaires to members and launch the call for evidence once the Written Ministerial Statement has been laid, which the MoJ team hopes to arrange in the week commencing 4<sup>th</sup> November. The President encouraged members to give a full and prompt response, as the consultation period will last for three weeks.

## **6. FJC Debate 2013, 'Is mediation fit for purpose?'**

Tessa Fyffe updated members on the debate plans, whilst members considered the circulated debate advert. The closing date for expressions of interest was last week and there have been just under 120 responses. Two of the Council's new members, Christina Blacklaws and Dominic Raeside, are taking part.

## **7. Pre-proceedings Protocol**

Bridget Lindley explained that her article had been published in Family Law. The Family Rights Group is receiving more calls on their public helpline about pre-proceedings. Nicola Gilbert explained that the DfE is supportive in principle of the possibility that additional guidance to the sector to supplement any statutory guidance could be helpful, but this would need to be looked at after Volume 1 has been revised. The DfE has set up a small working group to revise Volume 1 and will welcome engagement in the development of the guidance from Council members in due course. The President was concerned that his office had not been involved earlier, given that the pre-proceedings stage is vital on this project. Bridget Lindley is eager to work with the DfE on this project as this is, by definition, an interface area, and requires interagency collaboration. Members asked about the membership of the working group, whether the Department of Health and Welsh Government were represented, and also how the voice of the child was being represented. Sue Berelowitz asked how the third party protocol would feed into this work. The President echoed this consideration, and would like an update from the DfE on this working group. He asked to what extent the working group had considered the Coventry and Lincoln baby projects, and conducted a trawl of all existing local protocols. John Hall invited Nicola Gilbert to take these concerns back to the policy lead and working group, providing a report to the President. John Daly had spoken to Andrew Webb of the ADCS before this meeting, and the ADCS would support having the Volume 1 guidance revised first before any supplementary guidance is produced. Bridget Lindley would like this subject to remain on the Council's agenda. Christina Blacklaws commended Bridget Lindley's paper as cogent and well argued, and would support this remaining on the Council's agenda. The President noted that at the last 8 care centres he has visited the pre-proceedings issue was raised on every occasion. It was important for the President to be involved in this piece of work.

## **8. FJC Interdisciplinary Conference**

The President has spoken with Alison Russell QC and approved the draft conference programme. Anne Barlow is approaching the proposed speakers, and Alison will liaise with Tessa Fyffe in approaching McFarlane and Ryder LJJs. The event will be by invitation only, with a maximum of 100 delegates. Bridget Lindley noted that service-user input would be very valuable and this was supported by the President. She would invite Alison to make contact with Cathy Ashley, as FRG would be an ideal resource. Sue Berelowitz will liaise with her participation lead at OCC to discuss how best to involve children and young people.

## **9. Protected Parties**

Malek Wan Daud is leading on this piece of work. This follows a commission from the FJB, for the Council to update its 2010 guidance 'Parents Who Lack Capacity To Conduct Public Law Proceedings', in light of the revised PLO and 26 week timetable. He is working with Helen Clift at the Office of the Official Solicitor, and he sent a first draft to her last week. He hopes to circulate a draft to members in early November, with the final draft to the President at the end of November. Dr. Elizabeth Gillett would like to be involved and asked Malek to liaise with her where possible. Members agreed that the issue of pre-proceedings may cut across the guidance and supported the inclusion of this in the guidance. The President encouraged Malek to draft the guidance notwithstanding the current obstacles causing delay

in the acceptance of invitations by the OS to act as a litigation friend in public law children cases.

## **10. Communications**

Tessa Fyffe asked members to note the contents of Paper 6 and invited questions. Members endorsed the Secretariat's proposals and discussed other ideas such as optimum use of social media and regular and renewed identification of the Council's target audience. Members are invited to contact Tessa or Malek Wan Daud, the new Communications lead member, with comments or suggestions. Members will be contacted shortly for contributions to the e-newsletter and web pages.

## **11. Risk-Assessments**

This item will be carried over to the next meeting.

## **12. Experts' Standards – draft response**

Joe Murphy noted that 140 responses were received and these were overwhelmingly in support of the Standards. The only Standard from the original consultation document which has changed in the response is 1.12 'Feedback for expert witnesses in the family justice system'. It is likely that the name to be given to the Standards will change. The President noted that there must be a distinction between the President's view and that of the Council. It is for the FPRC to have the final say on the status of this document and this should be reflected in the language used. Similarly the use of the word 'Government' and 'MoJ' in the report appear to be interchangeable, but are they really? The President called for some clarity in the report in expressing the MoJ view as distinct from the FJC view, unless both shared the same view on a particular point. Joe Murphy accepted that this was one of the difficulties with a joint consultation. Members expressed concerns about removing the Standard regarding feedback, however it was confirmed that this is now addressed in Standard 9 (p.35). Heather Payne explained that the Standards were introduced to people at the Local Family Justice Network Wales road shows. Paper 7 is an evaluation of what came out. The Standards were viewed as a useful framework and provided a forum for discussion in the local FJB areas. The President cited a number of specific page numbers with amendments to the report, of which a note was made. Members then discussed how the comments on page 26 applied to those bodies providing hair-strand and DNA testing. Heather Payne believed that 'experts' undertaking these laboratory tests are regulated by the QAA and the Health and Care Professions Council, as set out in Appendix 1. The President, and a number of members, were under the impression that there were no regulators in these circumstances. He asked Joe Murphy to approach the regulators to confirm the position in the amended report. The President agreed that reference should be made to the FJC's response to the Transforming Legal Aid consultation, as this was absent in the current draft response. Some members were concerned that a joint consultation with the MoJ, might be viewed as inappropriate, though other members viewed this as the Council taking the initiative of tackling this problem with experts, and through collaborative working, have achieved the product and outcome originally sought. It was agreed that as a joint response, it must highlight the distinct part played by the Council, and this should be grappled with at the beginning of the response. Members then discussed the language and wording of the individual Standards at page 35. Alex Clark will liaise with Joe Murphy and Heather Payne over the precise wording of the Standards.

The President would like a number of drafting amendments made to the report. Following discussion, it was agreed that once the report had been amended to address the President's concerns, the President will be invited by the Council to submit the Standards to the FPRC to take forward.

**13. Law Commission consultation**

The deadline for this consultation is 31<sup>st</sup> October.

**14. Enforcement of Maintenance Orders – part of the Single Family Court?**

Martyn Cook has raised this with the FPRC. Parties are usually unrepresented, and arguing about large sums of money. He understood that this has been included in the bill before Parliament, and so could become an issue in the Single Family Court. John Hall will clarify the position and feed back to members.