



## **Family Justice Council**

### **Minutes of the Council Meeting 23 October 2017, Royal Courts of Justice**

#### **Present:**

Mr Justice Baker, Deputy Chair  
Christina Blacklaws, Private Law Solicitor (by phone)  
Alex Clark, Secretary to the Council  
Jaime Craig, Child Mental Health Specialist  
Stephen Cobb, High Court Judge  
Rebecca Cobbin, HMCTS  
Maud Davis, Public Law Solicitor  
David Duffett, Department for Education  
Colette Dutton, ADCS  
Elizabeth Gibby, Ministry of Justice  
Andrew Greensmith, District Judge  
Alison Kemp, Paediatrician (by phone)  
Beatrice Longmore, Office of the Children's Commissioner  
Sara McIlroy, Parents and Families  
Helen Morris, Family Magistrate  
Jane Probyn, Circuit Judge  
Dominic Raeside, Family Mediator  
Karen Simmons, ADCS  
Stuart Smith, Justices' Clerk  
Malek Wan Daud, Barrister  
Natasha Watson, Public Law Solicitor

Paula Adshead, Assistant Secretary to the Council  
Daphna Wilson, Secretariat

#### **Apologies:**

Rosemary Hunter, Academic  
Matthew Pinnell, CAFCASS Cymru

#### **Announcements:**

Mr Justice Baker introduced himself as the new Deputy Chair of the Council, following the retirement of Mrs Justice Pauffley. He also welcomed three new members to the Council – Colette Dutton and Karen Simmons, representing local authority children's services and Beatrice Longmore as the representative from the Office of the Children's Commissioner.

## **2. Minutes of last meeting:**

The minutes were approved, pending minor amendments.

### **Matters arising:**

#### Practice Directions:

- Practice Direction 3AA (Vulnerable Witnesses) had been delayed but was now expected to be implemented in late November.
- Practice Direction 3AB (children giving evidence) – the Family Procedure Rules Committee was considering a revised draft.
- Practice Direction 12J (Child Arrangement and Contact Orders: Domestic Abuse and Harm) came into force on 2 October.

#### FJC guidance: Capacity to Litigate in Proceedings about Children:

The details were being finalised and it was hoped that the guidance would be issued in late November. It will replace the existing FJC guidance on capacity in public law cases and cover private law cases for the first time.

#### Law Commission: Enforcement of Family Financial Orders:

The President wrote to Ministers on behalf of the Council to convey its support for the Law Commission's proposed recommendations for reform of the existing system of enforcement. Dominic Raab MP, Minister for Justice said he would consider these issues in the context of a wider review of the family justice system.

#### Family Drug and Alcohol Court (FDAC):

David Duffett confirmed that discussions with Ministers were continuing with regard to DfE funding for the FDAC National Unit. David Duffett informed the council that there would be sufficient funding for 2018-19.

#### Magistracy issues:

Helen Morris confirmed that direct recruitment of Magistrates to the family panel was currently underway in Birmingham, Manchester and London. Preparations were being made to produce videos to replicate the court experience for applicants and training packs for new recruits.

## **3. Cafcass Guidance – ALC concerns**

The Council discussed the concerns of the Association of Lawyers for Children (ALC) with regard to the public law aspects of the recent Cafcass guidance on the use of professional time to benefit children.

There were three main issues:

- Pre-proceedings – Cafcass pre-proceedings work in collaboration with local authorities,
- Guardians' attendance at court
- The appropriateness of position statements.

Anthony Douglas explained that the guidance was for operational purposes only. It focused

on pre-proceedings work to enable a coherent view of the child by the first hearing. As such, there had to be some flexibility in order to do what helps the court most. It was not seeking to circumvent the system nor to fetter the discretion of staff.

He added that tests were being conducted into whether cases can be safely closed without FHDRAs or a safeguarding letter. If successful, this will be rolled out to more test areas.

Maud Davis indicated that the pre-proceedings work was of most concern. Given the lack of legal aid, there was now more responsibility on Cafcass. Andrew Greensmith informed members about a Cafcass pilot beginning in January in Manchester which will consider Cafcass participation at the gatekeeping stage.

Natasha Watson said that the bulk of local authority work was carried out at the pre-proceedings stage and yet it was the least area of scrutiny. Furthermore, there was very little guidance regarding expectations in this area. She also mentioned a scheme being rolled out in Sussex.

Jane Probyn mentioned that there had been talk of FDAC being involved in pre-proceedings work.

Members felt that the issues around pre-proceedings work were of most concern. It was agreed that the Council should look into the various schemes taking place with the aim of producing guidance and examples of best practice.

#### **4. Business Plan**

Members provided a verbal update on their activity.

##### **Activity 1: Paediatric expert evidence**

The draft guidance was almost complete. It would be sent to both the Council and RCPCH for approval.

##### **Activity 2: Vulnerable witnesses & children training/work with Local Family Justice Boards (LFJBs)**

Given all the other resources already available it was agreed that the Council's role should be to signpost to existing training and guidance - this included the toolkits produced by the Inns of Court College of Advocacy, HMCTS guidance for court staff and the Advocates Gateway training.

This activity will be removed from the Business Plan – although there would still be a need to re-establish links with the LFJBs.

##### **Activity 3: Lessons from research for the judiciary**

Members noted progress report from the University of Sheffield. Telephone interviews had taken place with selected judges to explore the experiences and perspectives of the judiciary in relation to accessing to, and engaging with, research lessons and dissemination mechanisms. A focus group was also conducted with Judicial College course directors to explore the role of the College in disseminating lessons from research. A draft report was expected in late November.

#### **Activity 4: Support for litigants in person (Lips)**

Members acknowledged the breadth of useful information already available online for litigants in person and, as proposed earlier, agreed that the Council's priority should be to use its own webpage as a signposting resource. There was some concern that LiPs did not know what to search for. Rebecca Cobbin suggested that the private law team in the MoJ would be in a position to help with dissemination and communication issues.

#### **Activity 5: Judgecraft in relation to litigants in person**

The Judicial College had agreed to support the projects and to provide funding for the production of the videos. Two existing videos could be used as part of the family law suite and four new scenarios would be introduced to looking at unrepresented vulnerable parties and achieving settlement. Drafting would commence shortly.

#### **Activity 6: Pre-and post proceedings child protection mediation**

The working group was awaiting confirmation from the Family Rights Group that this project could be included in the sector-led review.

#### **Activity 7: Exceptional case funding (ECF)**

Rosemary Hunter had provided comments on the Public Law Project's draft guidance for making ECF applications and would also producing feedback on its draft research proposal to look at the low usage of the ECF scheme in family law.

#### **Activity 8: Pensions Advisory Group**

The three sub-groups – Legal; Valuation and Offsetting; and Expert – were each in the process of producing a paper identifying areas of agreement and contention. The full group will meet in December and its final conclusions were expected in December 2018.

### **5. Cross-examination of psychologist expert witnesses by litigants in person**

Jaime Craig pointed to three principal concerns:

- Potential harm to the LiP.
- Potential breaches of ethical conduct for the expert.
- Potential impact on the quality of evidence.

It was noted that cross examination by a LiP might give rise to the potential of further harm and to the LiP and therefore risk breaching the expert's duty of care.

Jane Probyn questioned whether judges should engage in the preliminary hearings or whether this would imply that they were accepting the reports. Stephen Cobb suggested that the issues might be caught by the vulnerable witnesses practice direction. It was suggested that legal advisers and letters of instruction to experts should flag up the issues.

Jane Probyn stated that she was happy to do some more work on this from the judicial perspective. It was agreed that Jaime Craig would write an article for Family Law or raise issues at a forthcoming conference such as FLBA in order to raise awareness of the issues.

## **6. First Hearing and Dispute Resolution Appointments**

Sara McIlroy spoke to her paper which looked at court users' concerns over the current effectiveness of FHDRA's in private child law proceedings. Anecdotal evidence showed that many had become merely an administrative appointment in which little is achieved.

There were two main points:

- Inconsistency of approach by district judges and legal advisers.
- Scope for the judge hearing the FHDRA to be recused automatically from further hearings.

There were mixed views on the recusal point but it was noted that LiPs in particular valued judicial continuity. Helen Morris mentioned that FHDRA's were often allocated to magistrates and, when there were no safeguarding concerns, there was a reluctance to make decisions or to recommend mediation. Dominic Raeside pointed out that legal aid was still available for mediation and that judges should explore this option further. Stephen Cobb felt that there was insufficient time for FHDRA's and they had become no more than directions hearings. It was also acknowledged that the Child Arrangements Programme (CAP) form continued to cause difficulties.

The Council agreed consider these issues in further detail. Sara McIlroy would speak to Rosemary Hunter regarding the potential for research and the matter would be discussed further at the next Executive Committee meeting.

## **7. Re. B - covert recordings**

Following his recent judgement Re. B, the President invited the Council to consider the question of covert recordings and how they were used in family proceedings.

It was agreed to set up a working group to consider the views of other organisations, make recommendations and draft guidelines. Natasha Watson volunteered to lead the working group with Jaime Craig and Malek Wan Daud's assistance.

## **8. Bridget Lindley Lecture**

The second Bridget Lindley lecture would take place on 13 March 2018 in Birmingham. It would focus on issues around the impact of social media and technology on proceedings, particularly in terms of transparency and confidentiality. Professor Richard Moorhead should be invited to give the lecture. Panel members might include Deborah Orr, Lady Justice King, Andrew Pack or Lucy Reid from the Transparency Project, Camilla Cavendish, a representative from NSPCC, a psychologist or other expert.

## **9. Annual debate**

The speakers were confirmed as follows:

Professor Michael Freeman and Victoria Butler Cole for the motion

Professor Jonathan Herring and Matthew Parris against.

The event was being publicised on the FJC webpages and invitations had been sent to selected organisations. Capacity at the venue had been increased from 100 to 150 in anticipation of significant interest.

## **10. Recent research**

Rosemary Hunter's paper outlined recently published research. It was suggested that Professor Karen Broadhurst, or a member of her research team, be invited to present their findings at the next Council meeting.

The NSPCC would also be invited to give a presentation at a future meeting.

## **11. HMCTS – Public Law and Adoption Reform project**

Stuart Smith informed the Council that HMCTS had launched its Public Law and Adoption Reform Project on 1 October and was looking to consult external stakeholders throughout the design process. Members were asked to consider which groups/organisations they would wish to see included.

## **12. Any other business**

1. Alex Clark informed the Council that Independent Child Trafficking Advocates (ICTAs) trials were due to take place in Wales, Hampshire and Greater Manchester. Funded by the Home Office, the pilots would begin after the commencement of Section 48 of the Modern Slavery Act 2015.

Project leads were keen to raise awareness of the initiative, particularly amongst the judiciary, and would be happy to speak to the Council in more detail.

2. Christina Blacklaws informed the Council that she was a member of an MoJ advisory group which had looked at financial guidelines for divorcing couples and designed an online tool to help narrow the issues. She would keep members informed of developments.

3. Christina also mentioned a Law Society campaign on legal aid which looked to reinstate early advice and intervention. They were seeking case studies in which people had not had any legal advice and had subsequently encountered difficulties.

4. Jaime Craig spoke about a new initiative, MindEd, which provided e-learning modules for various stakeholders such as the police. Pathways were currently being created for the judiciary, Cafcass and children's lawyers. Jane Probyn and Andrew Greensmith agreed to help with the pathway for family judges.