



Family Justice Council

Minutes of the Council Meeting 22 January 2018, Royal Courts of Justice

Present:

Sir James Munby, Chair (for part of meeting)
Mr Justice Baker, Deputy Chair – acting as Chair
Christina Blacklaws, Private Law Solicitor
Melanie Carew, Cafcass
Alex Clark, Secretary to the Council
Jaime Craig, Child Mental Health Specialist
Rebecca Cobbin, HMCTS
Colette Dutton, ADCS
Elizabeth Gibby, Ministry of Justice
Andrew Greensmith, District Judge
Rosemary Hunter, Academic
Alison Kemp, Paediatrician (by phone)
Sara McIlroy, Parents and Families
Matthew Pinnell, CAFCASS Cymru
Jane Probyn, Circuit Judge
Karen Simmons, ADCS
Stuart Smith, Justices' Clerk
Natasha Watson, Public Law Solicitor (by phone)

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

Apologies:

Maud Davis, Public Law Solicitor
David Duffett, Department for Education
Elizabeth Isaacs QC, Silk
Beatrice Longmore, Office of the Children's Commissioner
Helen Morris, Family Magistrate
Dominic Raeside, Family Mediator
Malek Wan Daud, Barrister

Announcements:

The Council congratulated Andrew Greensmith on his elevation to Circuit Judge. He would continue to act as the District Judge member until a successor could be appointed.

The Chair informed members that Stephen Cobb had recently stepped down as the High Court Judge member. The Council had benefited greatly from his knowledge and experience and he was thanked for his substantial contribution to its work. Arrangements were under way to identify a successor.

2. Minutes of last meeting:

The minutes were approved.

Matters arising:

FJC guidance:

Capacity to Litigate in Proceedings about Children: the final guidance was being proofread and formatted by the Secretariat ready for publication.

Financial Needs on Divorce: the guidance was with the President for his final input and approval.

Cross-examination of psychologist expert witnesses by litigants in person:

Jaime Craig had published an article to raise awareness of the issues in the January edition of Family Law. He had not received any feedback to date. The Chair suggested that he seek the views of the FLBA, Resolution and the Law Society's family law committee. It was noted that the British Psychological Society was also considering its own guidance on the matter.

First Hearing and Dispute Resolution Appointments (FHDRA)

Sara McIlroy and Rosemary Hunter had begun initial discussions about research in this area and would provide a report for the April meeting.

Independent Child Trafficking Advocates (ICTAs)

The ICTA trials had been brought to the attention of the Council at the last meeting and further information had recently been circulated to members. The project was progressing well with the ICTAs establishing networks with a wide range of professionals involved in the support and care of trafficked children.

Natasha Watson suggested that the information be shared with the National Association of Independent Reviewing Officers (NAIRO) who have a duty to ensure that children have access to independent advocacy.

3. Business Plan

Activities 1, 8 and 9 were discussed later in the meeting. Updates on the remaining activities were as follows:

Activity 2: Lessons from research for the judiciary

In Elizabeth Isaacs' absence, members were asked to note the draft report from the University of Sheffield. The report was welcomed but it was felt that it contained excessive detail. The Council would have to see the executive summary and recommendations before it could provide feedback. It was agreed that the Nuffield Foundation should have ultimate responsibility for the review and approval of the report.

Activity 3: Support for litigants in person

Following previous discussions, it was noted that much of this activity would be incorporated into a new activity – Dissemination and Communication (Activity 10).

Maud Davis had attended the recent Civil Justice Council's forum for professionals working with LiPs. The event publicised the LiP Network which aims to connect a wide range of people working in this area to share, discuss and collaborate on issues relating to LiPs - <http://www.lipnetwork.org.uk/join>

Members noted that the CJC was currently looking at the potential for digitising civil claims. It would be interesting to follow developments and consider the potential for joint working.

Activity 4: Judgecraft in relation to Litigants in Person

Rosemary Hunter reported that although there were no significant updates at present, work continued on helping judges manage LiPs. The Chair remarked on the importance of this project.

Activity 5: Child Protection Mediation

Alex Clark informed the Council that the working group's paper and recommendations had been submitted to the Care Crisis sector-led review, facilitated by the Family Rights Group. The call for evidence had recently closed and there had been over 200 submissions. These were being considered with stakeholders and a report was expected in early June. It was expected that the President's successor would consider which of the review's recommendations to champion with government.

Activity 6: Exceptional Case Funding (ECF)

Rosemary Hunter reported that the Public Law Project's (PLP) *How to...* guidance was almost ready for publication. Its research into the low uptake of ECF was in progress. As part of a larger campaign on early intervention, the research included a questionnaire for lawyers. Christina Blacklaws would arrange for the Law Society to cascade to its members.

Activity 7: Pensions Advisory Group

Rosemary Hunter provided an update. The Group had met in December to consider the three papers from its sub-committees - Legal; Valuation and Offsetting; and Expert. Further work was required to identify and resolve areas of contention. A report would be compiled and issued to stakeholder focus groups. Final conclusions were expected in December 2018.

It was agreed that mediators should have an input into the process and be included in the focus groups. Christina Blacklaws mentioned that the University of Ulster was conducting

its own project and would be worth speaking to. Separate guidance should be considered for LiPs and it was suggested that AdviceNow might wish to take this on, perhaps funded by the Nuffield Foundation.

4. Paediatric expert evidence

Alison Kemp provided an update. The draft guidance had been sent to the RCPCH for its consideration and some further refinement was needed. Jane Probyn commended the draft but felt that the distinction between an expert witness and a professional witness needed clearer demarcation. Natasha Watson agreed that treating clinicians needed more clarity – many felt that they were pushed beyond their expectations.

Alison Kemp would convene a meeting of the working group to reconsider the relevant paragraphs. The guidance would be brought back to the FJC the April meeting.

5. Pre-proceedings working group

Maud Davis and Melanie Carew had researched existing guidance around pre-proceedings and detailed their findings in a paper circulated to Council members. They were currently putting together a working group whose aim would be to produce a short guide.

The working group would look at: the various approaches taken by local authorities and the resultant inconsistencies across the country; Cafcass involvement in pre-proceedings; and the involvement of children.

The Chair stressed the need for the voice of the child in the process and Melanie Carew agreed that both consistency and flexibility were needed in this respect. It was suggested that a social worker should therefore be represented on the working group to consider these issues. Other members would include Natasha Watson, Colette Dutton, Maud Davis and Matthew Pinnell.

The working group would meet in the next few weeks and report to the Council meeting in April.

Christina Blacklaws highlighted the Law Commission's Early Advice Campaign – <http://www.lawsociety.org.uk/policy-campaigns/campaigns/early-advice/> – and suggested that the Government was looking favourably at early interventions. Elizabeth Gibby pointed out that the priorities of the new Ministers were not yet known.

6. Re. B - covert recordings

Natasha Watson informed members of developments since the President's request that the Council consider the question of covert recordings and how they were used in family proceedings.

A working group had been formed and its terms of reference agreed by the Executive Committee. It was currently considering existing guidance on covert recordings and early indications showed that there was very little. Discussions had also taken place with the Cafcass Family Justice Young People's Board on how young people might provide input to the guidance. The President suggested that Lucy Reed would be a useful contact.

The working group would aim to produce a first draft during the summer. A final version would then be submitted to the Executive Committee in September and to the full Council in October.

7. Bridget Lindley Memorial Lecture

Paula Adshead informed the Council that preparations for the event were progressing well. The lecture would focus on the impact of social media and modern communications on family proceedings and family law journalism. The journalist, Louise Tickle, had been secured as the keynote speaker. Andrew Pack, lawyer and blogger of Suesspicious Minds had agreed to be on the panel and enquiries were being made with NSPCC and NYAS to identify further panel members. The event would be advertised shortly on the website and members were encouraged to cascade the information to colleagues. Liz Isaacs was targeting local individuals and organisations in Birmingham.

8. Financial update

Paula Adshead provided an overview of the Council's financial position. She explained that the Council had been assigned £25,000 for the current financial year. The majority of this money was used to fund its events – each costing in the region of £3000 to £5000. Money was also allocated to the publication of the Council's guides; catering for Council meetings; and members' travel costs. £5000 was also made available to update the Advicenow guidance on Sorting Out Finances on Divorce and the Breaking Up Guide for Unmarried Couples.

There was no guarantee how much funding the Council would be allocated for the next financial year but members were asked to inform Paula if they had suggestions as to future funding requirements. It was stressed, however, that tight budget controls meant that approvals still had to be sought before expenditure could take place.

10. Recent research

Rosemary Hunter's paper outlined recently published research. She spoke about a recent Cafcass study into private law cases that return to court. The study aimed to ascertain the scale and patterns of such cases, and the circumstances behind the returns. Four main categories we used to code the primary drivers for the return to court:

- Conflicted adults
- Safeguarding concerns raised by parties
- A change in life circumstances
- The child's wishes and feelings

Rosemary also highlighted a New Zealand study looking at the "custody stalking" experiences of mothers who, after leaving their violent partners, were subjected to prolonged custody and child protection proceedings motivated by the fathers' desire to cause them distress.

Rosemary also referred to an Australian report which referred to its integrated services regarding domestic abuse. She will provide further details to the Executive Committee.

10: Presentation: Finding Fault? Divorce Law Practice in England and Wales

Professor Liz Trinder, Professor of Socio-Legal Studies at the University of Exeter, was welcomed as a guest speaker. She spoke about her recent study on divorce law practice, full details of which can be found at <http://findingfault.org.uk/> Members thanked Professor Trinder for her instructive presentation.

11: Any other business

Christina Blacklaws drew members' attention to the recent reports claiming that Randox and Trimega toxicology tests, dating from 2010 to 2017, were unreliable. The President explained that special arrangements had been put in place deal with any cases arising from tests carried out by the providers in question.