



Family Justice Council

Minutes of the Council Meeting 25 June 2018, Royal Courts of Justice

Present:

Mr Justice Baker, Deputy Chair – acting Chair
Melanie Carew, Cafcass
Alex Clark, Secretary to the Council
Jaime Craig, Child Mental Health Specialist
Rebecca Cobbin, HMCTS
Alistair Davey, Welsh Assembly Government
Maud Davis, Public Law Solicitor
Elizabeth Gibby, Ministry of Justice
Andrew Greensmith, District Judge
Rosemary Hunter, Academic
Alison Kemp, Paediatrician (by phone)
Elizabeth Isaacs QC, Silk
Sara McIlroy, Parents and Families
Matthew Pinnell, CAF/CASS Cymru
Jane Probyn, Circuit Judge (by phone)
Dominic Raeside, Family Mediator
Stuart Smith, Justices' Clerk
Natasha Watson, Public Law Solicitor
David Williams, High Court Judge (last part of meeting)
Chanelle Wright, Department for Education
Paula Adshead, Assistant Secretary to the Council
Daphna Wilson, Secretariat

Apologies:

Christina Blacklaws, Private Law Solicitor
Colette Dutton, ADCS
David Duffett, Department for Education
Beatrice Longmore, Office of the Children's Commissioner
Malek Wan Daud, Barrister

Guest speaker:

Professor Kate Morris, University of Sheffield

Announcements:

Interviews for the new magistrate member were underway and it was expected that the successful candidate would be in post in the autumn.

Members were sorry to learn that Sara McIlroy would be stepping down as the Parents and Families representative and that Dominic Raeside's reappointment as the Family Mediator member would come to an end in August. Andrew Greensmith would also be leaving following the imminent appointment of his successor and Elizabeth Gibby would soon be retiring. They were thanked for their dedication and significant contributions to the work of the Council over the last few years and were wished well for the future. The Secretariat would shortly run a recruitment campaign to identify their successors.

2. Minutes of last meeting:

The minutes were approved.

Matters arising:

Care Crisis Review: The review had concluded and its findings and recommendations published. The Chair commented on its impressive achievements and Lord Justice McFarlane's speech at the recent launch. In relation to current FJC work, both pre-proceedings and child protection mediation had been flagged up by the review. It would be important to liaise with the FRG to avoid duplication of work.

Cross-examination of expert witnesses by litigants in person: A consultation would take place shortly.

Specialist Domestic Abuse Courts: David Williams volunteered to join the working group.

3. Business Plan

Updates were provided as follows:

Activity 1: Practice Guidance on the Use of Paediatric Expert Evidence in Family Proceedings

Alison Kemp informed the Council that the guidance had now been approved by the President and the RCPCH, pending minor amendments. Paula Adshead would format the document and arrange publication on the RCPCH and FJC websites, Twitter, Family Law and Family Law Week.

Activity 2: Lessons from Research for the Judiciary

Professor Kate Morris would be providing an update later in the meeting.

Activity 3: Judgecraft in relation to Litigants in Person

Rosemary Hunter informed the Council that filming of the first two videos would take place in July and thanked Jaime Craig and Matthew Pinnell for their feedback on the scripts.

The FHDRA videos would be used in private law training with associated guidance to help inform discussion. Rosemary Hunter and Liz Trinder would carry out an analysis after the final videos were published in October.

Activity 4: Child Protection Mediation

The Care Crisis Review had included a recommendation that the Nuffield Family Justice Observatory explores international examples of the use of mediation in public care proceedings. Following the departure of Andrew Greensmith, the Council was keen not to lose sight of this work. Natasha Watson agreed to monitor the position until until a new District Judge and mediator member had been appointed.

Activity 5: Exceptional Case Funding (ECF)

PLP had published its research into Family Law and Access to Legal Aid, which also considered the low uptake of ECF:

<https://publiclawproject.org.uk/wp-content/uploads/2018/04/Family-Law-and-Access-to-Legal-Aid.pdf>

It was noted that although the Legal Aid Agency had published some guidance, it was disappointing that it had not put forward any practical advice about what makes a successful application.

Activity 6: Pensions Advisory Group

The guidance for professionals was expected to be finalised and published online by November. Rosemary Hunter would check if printed copies were required. A separate guide for litigants in person would be produced by Advicenow, funded by the Council.

Activity 7: Covert Recordings

Natasha Watson reported that the LSCB/Transparency Project guidance was in the final stages of development and that it would help inform the FJC guidance. Consideration should be given to implications arising from data protection, both in the making and sharing of a recording, and it would be important to seek the views of young people. Mr Justice Baker suggested liaising with groups such as Families Need Fathers, BASWA and Unison to ensure that differing perspectives were taken into account.

It became apparent that two work strands were emerging – issues affecting professionals and those affecting family members. It was agreed to prioritise the guidance for professionals before considering separate guidance for families.

Activity 8: Pre-proceedings

Maud Davis and Melanie Carew had produced a first draft of the guidance for local authorities. The aim was to have a short core document comprising the basic principles to which the local authorities should adhere – additional information would be included as links

and appendices. The draft would be circulated to the working group for comments before being submitted to the full Council in October.

Activity 9: Communications and dissemination of FJC work

Elizabeth Isaacs informed the Council that the Family Justice Board was now fully functioning, having not met for 18 months. Members discussed the potential for re-establishing links with the Board and the Local Family Justice Boards. Despite a general sense that the LFJBs were now largely focused on performance statistics, Elizabeth Gibby confirmed that they were also expected to report on practices, policies and lessons learned.

It was agreed that the relationship between the Council and the Boards should be revisited.

Activity 10: LASPO review

Although the Ministry of Justice was not formally consulting on the review, the Council agreed to submit Christina Blacklaws paper and request a meeting with MoJ officials. Rosemary Hunter suggested that the paper should stress the many workstreams that the Council was taking on in response to the changes brought about by LASPO.

Activity 10: Specialist Domestic Abuse Courts (SDAC)

Rosemary Hunter had provided a paper setting out the group's terms of reference. Its key objective would be to consider the potential for piloting an SDAC to handle civil injunctions, private law children and financial matters. It would look at the merits of an SDAC, consider whether reforms to practice would be desirable and make recommendations as to how to proceed.

The group aimed to produce draft recommendations for comment by the Executive Committee in March 2019 and for consideration by the full Council in April 2019.

David Williams, Matthew Pinnell and Alison Kemp volunteered to join the group.

4. Special Guardianship Orders

The Chair referred to the Re. P-S judgement in which the Council had been asked to undertake an investigation into what form any guidance on special guardianship orders should take. He welcomed the request which was a reflection of the quality of the Council's work.

A new working group would be set up under the chairmanship of Jane Probyn and David Williams. Karen Simmons volunteered to contribute from the local authority perspective, and would liaise with Colette Dutton. Jaime Craig also volunteered to join the group. Professors Judith Masson or Judith Harwin would be invited to provide the academic perspective.

5. Young people's representation on the Council

At the last meeting, David Williams had raised the issue of whether the Council should include a young person on its membership. The Executive Committee had discussed the matter further and proposed that the Council liaise with the Family Justice Young People's Board, seeking its advice as to how and when its members might contribute.

It was agreed to share the Council's Business Plan and agendas with the YPB, thereby providing the opportunity for them to provide comments and attend meetings accordingly. Each working group should also consider specific points on which they would welcome young people's comments.

6. Recent research

Rosemary Hunter provided an update of recently published research for the Council's information. Members agreed to invite Professor Julie Doughty to the next meeting to talk about the Review of Research and Case Law on Parental Alienation.

7. Conference

The Executive Committee had considered several topics put forward by Natasha Watson in relation to the extent to which existing statutory frameworks are able to meet the needs of vulnerable children, young people and their families. The favoured topic was:

“Have thresholds for intervention by state agencies changed? A consideration of current understanding of the significance of emotional abuse and neglect, both in terms of law and in terms of evaluation of harm.”

Several suggestions were made as to speakers including Isabelle Trowler (Chief Social Worker for Children and Families), Professors Kate Morris and Karen Broadhurst and Anne Longfield (Children's Commissioner). Natasha Watson agreed to map out a plan for the conference.

8. Debate

Members were asked to consider possible topic and speakers for the next annual debate which would take place in late November/early December.

Members welcomed Natasha Watson's suggestion of looking at managing risk and what was an acceptable level of risk in the family justice system but, given the breadth of the topic, wondered if this might be better placed in a conference.

Instead, it was agreed to have covert recording in the family justice system as its theme with the motion *Nothing to hide – what's wrong with covert recording?*. Speakers should include practitioners and those representing the voice of the child. Members were asked to consider alternative locations to London.

9. Any other business

David Williams spoke about a campaign by the parents of Charlie Gard to change the law in respect of medical mediation. “Charlie’s Law” would require medical mediators to be involved in disagreements as early as possible.

Members discussed whether the Council should play a role in this. Melanie Carew pointed out that Cafcass was carrying out research to look at historical cases involving medical treatment and to assess if and when mediation should have taken place. It was suggested that the Council should wait until this work concluded at the end of the year. However, it was noted that the Cafcass research was coming from a different perspective to that of the Council and therefore it should begin looking at the issues now.

David Williams agreed to draft a paper outlining his proposal for members’ consideration.

Maud Davis highlighted the withdrawal of DfE funding for the FDAC National Unit. Alex Clark added that the DfE was working with Tavistock to minimise the impact and to work out ways to sustain the nine local FDACs. An application to the Life Chances Fund had been approved but local authorities were reluctant to sign up to a payment by results model. The bid was therefore withdrawn.

It was noted that the President had written to junior ministers about the issue and it was agreed that Mr Justice Baker should also write on behalf of the Council.

10: Presentation by Professor Kate Morris

Professor Morris provided an overview of the report and recommendations in relation to exploring the lessons from dissemination of research to the judiciary – [http://www.nuffieldfoundation.org/sites/default/files/files/Morris%2042749%20-%20Final%20Report_Child%20welfare%20research%20dissemination%20and%20the%20judiciary%20\(Apr18\).pdf](http://www.nuffieldfoundation.org/sites/default/files/files/Morris%2042749%20-%20Final%20Report_Child%20welfare%20research%20dissemination%20and%20the%20judiciary%20(Apr18).pdf)

One of the recommendations sought to adopt a more targeted and systematic approach to links with the Judicial College. Consequently, Elizabeth Isaacs agreed to liaise with the College to identify priorities and discuss how using research could be incorporated into their courses.