



Family Justice Council

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

Present:

Sir Andrew McFarlane, Chair
Lord Justice Baker, Deputy Chair
Christina Blacklaws, Private Law Solicitor
Melanie Carew, Cafcass
Alex Clark, Secretary to the Council
Jaime Craig, Child Mental Health Specialist
Judith Crisp, District Judge
Alistair Davey, Welsh Assembly Government
Maud Davis, Public Law Solicitor
Colette Dutton, ADCS
Rosemary Hunter, Academic,
Andrew Jones, Ministry of Justice
Ify Okoye, Department for Education
Jane Probyn, Circuit Judge
Stuart Smith, Justices' Clerk
Lucy Theis, High Court Judge
Malek Wan Daud, Barrister
David Williams, High Court Judge

Secretariat:

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

Observers:

Leyla Benali, Ministry of Justice
Tom Henwood, Ministry of Justice
Alexandra Morton, Civil Justice Council

Apologies:

Neal Barcoe, Ministry of Justice
Rebecca Cobbin, HMCTS
Elizabeth Isaacs QC, Silk
Alison Kemp, Paediatrician
Beatrice Longmore, Office of the Children's Commissioner

Matthew Pinnell, CAFCASS Cymru
Karen Simmons, ADCS
Natasha Watson, Public Law Solicitor

Guest speaker:

Dr Julie Doughty, University of Cardiff

Announcements:

- Elizabeth Gibby had recently retired and was thanked for her contribution to the work of the Council – most notably, her efforts to secure ministerial approval for the Rule changes on special measures to assist vulnerable adults giving evidence in the family court. Her successor is Neal Barcoe.
- Two new members were welcomed to the Council – Louise Fleet as the new Magistrate member and Ify Okoye as the new representative from the Department for Education.

2. Minutes of last meeting:

The minutes were approved, pending minor amendments.

Matters arising:

Guidance published: The “*Practice Guide on the Use of Paediatric Expert Evidence in Family Proceedings*” was published in August. The Council thanked Alison Kemp for drafting the guidance and Jane Probyn, Maud Davis and Jaime Craig for their contributions. The guidance was published on the FJC and RCPCH websites and publicised in Family Law and on Twitter.

LASPO: Christina Blacklaws, Rosemary Hunter, Maud Davis and Stuart Smith were thanked for their work on the paper detailing the Council’s observations on LASPO for the Post Implementation Review. The paper was submitted to the MoJ during the summer and a meeting was being arranged to discuss the issues with MoJ officials.

Potential funding for victims of domestic abuse: Rosemary Hunter and the Domestic Abuse Working Group had responded to a call from the MoJ for information about initiatives which seek to support victims of domestic abuse. This followed indications of additional government funding in this area. Rosemary drafted a paper outlining the group’s aims and recommendations which was submitted to the MoJ in August. The Council was awaiting the outcome.

Young people’s representation: As agreed at the previous meeting, Melanie Carew had sent the meeting agenda to the Young People’s Board for its consideration. It was suggested that they also receive the Business Plan and notification of FJC events.

Cross-examination of expert witnesses by litigants in person: Jaime Craig had conducted a review into the concerns of legal practitioners and provided a report for the members’ consideration. He found that the concerns were similar to those of psychologists, particularly in terms of ethics, quality of evidence and the impact on both litigants in person and experts. It was agreed to approach the Legal Aid Agency about the need for further access to funding

and fast tracking cases involving vulnerable adults, and also to explore the potential for judicial training with the Judicial College.

3. Links with the Family Justice Board and Local Family Justice Boards

Paula Adshead had been in discussion with MoJ officials to re-establish the Council's relationship with the Boards. It was agreed that Alex Clark would provide quarterly written updates on Council business to the national Board meetings whilst a summary of LFJB issues would be brought to the attention of the Council.

Andrew Jones informed the Council that the FJB had reconvened and had held two meetings this year. Its terms of reference had been amended slightly and a suggested workplan was being considered. It was keen to strengthen links with its subgroups – the Council and the Young People's Board – as well as the LFJBs. It was acknowledged that the Care Crisis Review had painted a mixed picture of the effectiveness of the local boards. A new sponsor network was being put in place to provide clarity, highlight issues and convey messages to the LFJBs. There would be a particular focus on supporting those that were operating less effectively and a conference designed specifically for the LFJBs was being organised for early 2019.

The President commented on the absence of leadership from the national Board at a time when Sir James Munby had spoken about the crisis in the family justice system. He also felt that because its Performance Improvement Sub Group had continued to meet, the focus appeared to be on statistics. He welcomed the efforts by the DfE and the MoJ to reinvigorate the process. The Council hoped to continue its previous practice of highlighting issues for the Board's attention and it was agreed to decide at future meetings what those issues should be.

Concerns were raised that LFJB membership was too restrictive and that legal professions, in particular, being excluded from the boards. It was suggested that LFJBs should be encouraged to have their own training subcommittees to help re-establish engagement with local professionals. It was further suggested that the LFJBs should have a standing agenda item to highlight any issues to feedback to the national board and to the FJC. Andrew Jones agreed to investigate these issues further.

3. Business Plan

Updates were provided as follows:

Activity 1: Lessons from Research for the Judiciary

Rosemary Hunter informed the Council that the Judicial College had held a session on research as part of a private law course. It would become a standing item in both private and public law and magistrate courses in future. Rosemary Hunter agreed to speak to Helen Pustam about getting feedback from the judges.

Activity 2: Judgecraft in relation to Litigants in Person

Rosemary Hunter explained that the first two FHDRA videos were being re-recorded due to poor sound quality. The scripts for the next two videos (DRA and GRH) were complete and the FDR video was in progress. Rosemary Hunter would discuss the script with Louise Fleet and Stuart Smith. Members expressed an interest in viewing the videos at a future meeting.

Activity 3: Child Protection Mediation

Judith Crisp would be looking to set up next meeting of the working group once a new mediator member was in place.

Activity 4: Exceptional Case Funding (ECF)

This activity was now complete, pending publication of PLP's "How to..." guidance on the FJC website and publicising with relevant organisations. It had been circulated to FJC members who were asked to cascade further.

Activity 5: Pensions Advisory Group

The timetable had been pushed back a little with the survey data due to be analysed in October. The next meeting would place at the end of January with the final guidance expected to be submitted to the Council in mid February, for approval by 8 March. The Advicenow version would follow later.

Two other reports were brought to the attention of the Council, – Age UK and the Law Society/Chartered Institute. It was suggested that the PAG might wish to consider these reports.

Activity 6: Covert Recordings

Natasha Watson had provided a written update. The first draft of the report had been delayed but was expected to be ready by the end of October. There would then be a series of meetings with the working group to consider the draft so that a more public facing document can be ready in time for the debate.

The views of young people would be sought. Unison would be consulted in relation to the publication of covert recordings of professionals. Work had also been carried out in relation to GDPR and the Information Commissioner's Office had agreed to provide feedback. Consideration should also be given to whether there was learning from a body of law in which covert material is regularly produced and identifying policy precedents for covert recordings. The report would also look at the need for more overt recordings.

It was expected that the debate would be used as a launchpad for consultation in the New Year, with a final report being submitted to the Council in early 2019.

Activity 7: Pre-proceedings

Maud Davis explained that the draft guidance had been delayed but should be ready for wider consultation with selected stakeholders in November/December. She hoped to provide

the final version to the Council in January.

The President indicated that the DfE and MoJ were working together to look at pre-proceedings following comments from the Care Crisis Review that they were not working well. It was expected that this work would provide further detail and it was suggested that the working group wait for its findings at the end of the year. Ife Okoye suggested that the draft guidance be sent to the DfE, MoJ and ADCS before the next meeting.

Activity 8: Communications and dissemination of FJC work

Malek Wan Daud emphasised the need to reinvigorate links with the MoJ and the Civil Justice Council and to rejuvenate the Council's website to signpost to helpful information sources. He agreed to outline some proposals in a paper for the next Council meeting.

Activity 9: LASPO review

This item was discussed earlier under Matters Arising.

Activity 10: Domestic Abuse

Rosemary Hunter informed the Council the subgroup had concluded that Specialist Domestic Abuse Courts were not feasible and that its focus was now on producing best practice guidance, bringing together PD 12J and practical issues. Three courts – Croydon, Blackburn and Wales – would be asked to pilot the framework before a formal launch late next year. It was not envisaged that a Rule change be necessary, but this would be considered as the pilot progressed.

Jaime Craig and Louise Fleet volunteered to join the group.

Activity 11: Special Guardianship Orders

The terms of reference had been agreed and the membership was being finalised. The group was seeking to involve practitioners and would also look to co-opt a barrister and representatives from Resolution and Cafcass. It would liaise with the DfE via Kevin Woods.

Alex Clark mentioned that he had spoken to Mary Ryan regarding the Family Justice Observatory and would be meeting her in the coming week.

5. Debate: Covert recordings

The debate would take place on 3 December at the Met Hotel in Leeds. Four speakers had been secured – Lucy Reed and Hannah Markham QC to speak for the motion and HHJ Mary Lazarus and Debbie Singleton to speak against. The event was being advertised on the FJC website and publicised with all relevant stakeholders.

It was suggested that live streaming be considered in order to bring the event to a wider audience.

6. Conference: Thresholds for intervention

The conference was scheduled for 12 March 2019. It would explore any changes in the thresholds for intervention by state agencies as well as our understanding of, and the way we deal with, significant harm. Isabelle Trowler, Chief Social Worker for Families and Children, had agreed to deliver the Bridget Lindley Lecture and was expected to speak about her recent report – *Care Proceedings in England: The Case for Clear Blue Water*. Invitations to speak had also been sent to Anne Longfield, the Children’s Commissioner, and Professors Karen Broadhurst and Kate Morris.

Members discussed the issues to be explored including: whether Re. B-S had changed perspectives; whether judges were becoming risk averse; the problems of safeguarding older children; and the 30th anniversary of the Children’s Act. It was agreed that it should be a participatory conference with breakout groups.

A drafting committee would be set up to produce an outline plan. The President, Baker LJ, Lucy Theis and Jane Probyn expressed an interest from the judicial perspective.

7. Medical mediation

David Williams had spoken at the last meeting about the role of mediation to help resolve disputes between families and medical experts. He circulated a paper for members’ consideration.

It was noted that although fewer than twenty cases a year were heard at the High Court, this did not underestimate their importance and the amount of resources dedicated to them. Many cases did not reach court as they were already in mediation with paediatric psychologists in children’s hospitals. Jaime Craig advised that this would be an important group to consult and he would make enquiries as to whether they had a protocol in place.

Melanie Carew wondered whether the Council was the right body to take forward this work. She added that Cafcass was currently reviewing forty cases where mediation had either taken place or was deemed unnecessary. It was expected to conclude in March 2019. The Nuffield Ethics Committee would also be looking at these issues at its conference on 28 November. It might be premature, therefore, for the Council to consider guidance at this stage.

It was agreed to set up a working group to conduct a scoping exercise before deciding whether to take forward this work. David Williams agreed to lead the group with input from Jaime Craig. Alison Kemp and the new mediator member would be invited to join the group.

8. Recent research

Rosemary Hunter provided an update on recently published research.

9. Any other business

There was no further business.

10. Guest speaker: Parental Alienation Review

Dr Julie Doughty, Lecturer in Law at Cardiff University, gave a presentation on the recent Review of Research and Case Law on Parental Alienation. The full report can be found at: <https://gov.wales/docs/cafcass/publications/04052018AReviewofResearchandCaseLawonParentalAlienation.pdf>