



## **Family Justice Council**

### **Minutes of the Council Meeting 20 May 2019, Royal Courts of Justice**

#### **Present:**

Sir Andrew McFarlane, Chair  
Lucy Theis, High Court Judge, Acting Chair

Annie Bertram, Parents and Relatives member  
Christina Blacklaws, Private Law Solicitor  
Melanie Carew, Cafcass  
Alex Clark, Secretary to the Council  
Rebecca Cobbin, HMCTS  
Jaime Craig, Child Mental Health Specialist  
Judith Crisp, District Judge  
Colette Dutton, ADCS  
Louise Fleet, Magistrate  
Alison Kemp, Paediatrician (by phone)  
Matthew Pinnell, CAFCASS Cymru  
Jane Probyn, Circuit Judge  
Stuart Smith, Justices' Clerk  
Claire Webb, Family Mediator  
David Williams, High Court Judge

#### **Secretariat:**

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

#### **Apologies:**

Neal Barcoe, Ministry of Justice  
Maud Davis, Public Law Solicitor  
Sarah Flynn, Office of the Children's Commissioner  
Rosemary Hunter, Academic,  
Andrew Jones, Ministry of Justice  
Ify Okoye, Department for Education  
Malek Wan Daud, Barrister  
Natasha Watson, Public Law Solicitor

#### **Guest speaker:**

Professor Beth Neil, University of East Anglia

## **Announcements:**

Members were informed that this was Alex Clark's last FJC meeting. Alex had been Secretary to the Council for 12 years – a term which also included stints as Secretary to the Civil Justice Council and more recently, Private Secretary to the President. He was thanked for his valuable contributions to the work of the Council over the years. His extensive knowledge of the family justice system and his insight into its many components had been of immense value to the Council and he had been pivotal in guiding its business. He was wished every success for the future.

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

The minutes were approved.

## **Matters arising:**

Conference: The FJC conference, which explored issues around current thresholds the state intervention, took place on 12 March. The event was very well attended by a wide range of representatives from the family justice system. The speakers had provided some informative and thought-provoking presentations, all of which were highly praised by delegates and which helped stimulate an interesting Q&A session. The President commented that it was one of the best conferences he had attended. A podcast and transcript of Isabelle Trowler's lecture and the speakers' presentations were available on the FJC webpages. A full report was published in the May edition of Family Law.

Written evidence to the Joint Committee on the draft Domestic Abuse Bill: The Domestic Abuse Working Group had recently submitted written evidence to the Parliamentary Joint Committee conducting pre-legislative scrutiny of the draft Bill. The evidence was the same as that submitted by the Council to the Prison and Courts Bill consultation in 2017.

Lessons from research for the judiciary: Jane Probyn had spoken to the Judicial College about the report's recommendations. The College confirmed that it had implemented the recommendations and had introduced a module in private law training called Recent Developments in Research. A similar module is expected to be introduced in public law training in October. The training incorporated a presentation from Rosemary Hunter on recent research as part of the Combined Civil and Family Law training course. The presentation dealt with both the substance of recent research reports and research literacy. Rosemary will deliver similar presentations at two further private law courses in October 2019 in February 2020. HHJ Simmonds passed on his thanks to Rosemary.

The Council thanked Elizabeth Isaacs, Professor Kate Morris and the University of Sheffield for their work in bringing this initiative to fruition. It awaited the outcomes of the other recommendations included in the report.

Silk member: interviews were recently held for a new Silk member following Elizabeth Isaacs' end of term. The panel's decision will be put to the President his approval shortly.

Cross-examination of expert witnesses by litigants in person: Jane Probyn had spoken to Chris Simmonds at the judicial College about including some element in judicial training. Alex Clark had liaised with the Legal Aid Agency and was awaiting further developments. This will be discussed further at the next Council meeting.

### **3. Business Plan**

The Business Plan for 2019-20 was agreed. Christina Blacklaws commented that she was impressed by the breadth and depth of the Council's work which had dramatically increased over the last few years.

Updates were provided as follows:

#### **Activity 1: Judgecraft in relation to Litigants in Person**

The video of a FHDRA with a bench of Magistrates had been completed and would be incorporated into a training package with accompanying materials. Louise Fleet had suggested several options for further videos with Magistrates which will be refined down before drafting the scripts.

The FHDRA, GRH and DRA videos with a District Judge were being edited and incorporated into a complete training package. They were expected to be used as part of the private law induction course in late July. Filming for the FDR video was complete and it was expected to be used for a family money training course in October.

The next stages would be to draft and film further videos for Magistrates, and to observe and evaluate the use of the videos in training and judicial responses to them. Some of the videos will be shown at a future Council meeting.

Annie Bertram asked if the videos would be available for litigants in person (LiPs). It was noted that the Judicial College was considering making the videos public facing. There were several initiatives already in place for LiPs – Bournemouth had produced a film showing the court and how it worked; Bristol arranges familiarisation visits; Lucy Reed had produced several videos; and Cafcass had excellent material. The key was to amalgamate all the information into one place and for that to be listed as a priority on research. It was felt that gov.uk was lacking.

Christina Blacklaws commented that following the LASPO review, the innovation fund for new LiPs strategies had doubled. £3 million could now be made available for selected initiatives.

#### **Activity 2: Child Protection Mediation**

Judith Crisp, Melanie Carew and Claire Webb had met to discuss how to take this activity forward. Judith Crisp would speak to Christina Blacklaws about potential funding from the LiPs fund. This would determine whether the group's aim would be guidance or a pilot scheme.

#### **Activity 3: Pensions Advisory Group**

The final report of the Pensions Advisory Group had been sent to the President and the FJC for approval and was due to be published on 1 July 2019. It was noted that this was a working tool for judges and practitioners rather than formal guidance. It was agreed that the publication should be announced in the joint covering document from both the PAG and the FJC.

The PAG remained keen to print a small number of hard copies of the report (around 100), but the cost would be covered by remaining funds from the Nuffield grant. Work would proceed over the summer on a simplified version of the report suitable for non-specialists and the divorcing public, which should be published on the Advicenow website by the end of September. The FJC has already committed £2500 for this.

#### **Activity 4: Covert Recordings**

Natasha Watson had sent her apologies and indicated that she would have the draft guidance ready for the next Council meeting.

Jaime Craig, Jane Probyn and Annie Bertram expressed an interest in seeing the draft guidance and the latter volunteered to join the working group. Jane Probyn would liaise further with Natasha. It was suggested that the Transparency Project's guidance may be a useful resource for this work.

#### **Activity 5: Pre-proceedings**

The Executive Committee had recently noted the significant overlap in the work of this group and that of Keehan J's Public Law Working Group. It agreed, therefore, to put the Council's work on hold until the people WG had reported. It would then decide whether there was a need for any further work in this area.

#### **Activity 6: Communications and dissemination of FJC work**

Malek Wan Daud was unable to attend the meeting but had circulated a paper outlining to what extent the FJC webpages were being used and putting forward both short-term and long-term goals to improve its look and accessibility. He also reiterated the need for commitment from FJC members to publicise the work of the Council within their organisations and specialisms. Melanie Carew would arrange for a link to be added to the Cafcass website accordingly

Daphna Wilson pointed out that the Secretariat comprised only two members of staff and therefore had limited time to manage both a website and Twitter account. She also informed members that the website had been through several reincarnations which were beyond the Secretariat's control and that a number of improvements were now being made to improve its content.

Several members advocated setting up a Twitter account and it was agreed to set up a working group to look what was involved to discuss further with the judicial office communications team. The working group would comprise Malek Wan Daud, Annie Bertram, David Williams and Christina Blacklaws.

#### **Activity 7: Domestic abuse**

Rosemary Hunter had provided a written update. The working group had received a good range of responses to its consultation on best practices in dealing with family law cases involving domestic abuse. Many of the responses pointed to the need to implement existing

guidelines such as Practice Direction 12J fully and consistently. An important function of the Best Practice Guidance, therefore, will be to encourage and explain how this can be done. The group was in the process of drafting the Guidance and this would be followed by a further round of consultation. The original timeframe would be extended accordingly. Consideration would then be given to whether the guidance would need piloting and what this would involve.

The group was encouraged by the interest in its work expressed by the then Minister, Lucy Frazer.

Following earlier discussions, Judith Crisp had approached the Judicial College to suggest they offer training for DJs and DDJs on the impact of domestic abuse in financial proceedings. This had now been taken up, and the College was planning to include a talk on this issue as part of three training courses to be run in October and November. Judith and Rosemary were drafting a paper and presentation accordingly.

It was noted that there may be some crossover with the work of Cobb J's Private Law Working Group. It would be interesting, therefore, to consider its outcomes as well as developments with the Domestic Abuse Bill. The President was happy for the working group to continue its work with the draft guidance, indicating that there was a need for it amongst the judiciary and magistracy.

Melanie Carew felt that there were differing views within the working group about the end result and therefore consensus should be reached about what goes in the guidance. The group should meet to discuss before the next Council meeting. Christina Blacklaws stressed that hard data, as well as comments, were critical to any evaluation process.

### **Activity 8: Special guardianship**

The group had responded to a request from the President for guidance to address cases where an extension to the statutory 26-week time limit is sought in order to assess potential special guardians, more fully, within public law proceedings. The group would be meeting later in the day to finalise the guidance ready for publication.

### **Activity 9: Medical mediation**

Work had not yet begun due to other pressures. Melanie Carew informed the Council that Cafcass was conducting some research into a number of cases involving mediators, looking at when mediation was appropriate. A report would be drafted over the coming months and shared with the Council. Jaime Craig mentioned that the Paediatric Psychology Network (PNN), a forum for paediatric psychologists, would be a useful resource and would provide a link to both this and the British Psychological Society.

## **4. The President's working groups**

Alex Clark provided an overview of the work of the three working groups:

Private Law – the group had published its interim report and recommendations. Interdisciplinary in nature, the group engaged with their wide range of stakeholders to look at processes and cultural change. Some of the more significant changes will take some time to

see the light of day given the lack of resources and funding. It was expected to produce final guidance later in the year.

Experts – the group is currently assessing over 700 responses to its recent consultation regarding barriers to working in the family court. A wide range of medical experts and lawyers had responded. It was interesting to note that many of the barriers to medical experts were not so much focused on finance but on NHS contracts and training.

Public – its interim report was expected to be published in June, comprising 58 short-term recommendations and 17 long-term. A significant piece of work looking at judicial and local authority work with a view to encouraging better joint working. Jaime Craig asked if only medical experts were consulted. He was informed that a quarter of the responses were from psychologists, channelled through medical colleges rather than psychologist societies. He suggested that the British Psychological Society be invited to respond.

The groups' final reports were expected towards the end of the year.

## **5. Family Justice Board**

Tom Henwood, MoJ policy, delivered an update on the work of the Family Justice Board (FJB). The eight proposals to address rising volume and variation in public family justice had been shared with LFJBs through a newsletter and conference earlier in the spring. At the FJB's last meeting on 7 May, the board had agreed to the creation of work programme, drawing together 33 national and local actions across the eight strands. This work programme will be convened by central government, with other family justice stakeholders supporting, particularly in local implementation, which will be the key challenge.

To maximise impact, build momentum and demonstrate change is possible, whilst ensuring the pace of change is manageable locally the programme initially focuses on pre-proceedings, clarifying the use of s.20/s.76 as a viable and appropriate alternative to care proceedings, and more effective sharing of best practice within the system. The work programme will be continuously developed, with an important role for the President's Public Law Working Group.

MoJ policy also summarised discussion of Private Family Law at the FJB. MoJ's presentation had considered what the data tells us, why those cases matter, what has been learned to date and some options for reducing demand. Key challenges included reaching the up to 20% of people who may not necessarily need to go to court to resolve their private family law disputes, the timing of interventions, understanding the cohort better, and combining interventions to get people in the right mental space to resolve their issues.

From a policy perspective, this would likely mean using digital and behavioural insights to get feedback on what messaging works, working with other government departments, learning from other jurisdictions and working to understand what distinguishes court users in private family law disputes from the majority who do resolve their issues independently. Like public law, an important role is envisaged for the President's Private Law Working Group. The FJB asked for this item to return for its next meeting in September with a more detailed programme of work.

The Council welcomed the update. In response to a request from Annie Bertram, the MoJ confirmed that without being too prescriptive, it was encouraging that the LFJBs to invite parents onto their membership. Christina Blacklaws suggested that it would be useful to

liaise with the Lever Support Advisory Board and Mrs Justice Theis commented that re-energising the local boards was extremely important for consistency on the ground. It was noted that the FJB had appointed a new chair which would help to make it more productive.

## **6. Event planning 2019**

Paula Adshead had circulated a paper seeking the members' views on the potential for hosting an annual conference.

The Council agreed that the conference should be held on a yearly basis, given the success of the recent conference and the need to raise the profile of the Council. It was further agreed to amalgamate the conference with the Bridget Lindley Lecture, in March of each year. It would be important, however, to ensure that the lecture remains a key feature of the event and therefore be timetabled in the programme accordingly.

Members were asked to consider themes for the next debate (November/December) and conference (March). Two topics were suggested at the meeting:

- Management of birth family contact in adoptive placements – parental, sibling and wider family members (following Beth Neil presentation).
- Experts – use of/encouraging participation with (based on Experts Working Group report).

Having discussed the potential for sponsorship, David Williams agreed to speak to the Experts Working Group about sponsorship from the Royal Colleges and/or Julie Maxton at the Royal Society.

## **7. Research update**

Rosemary Hunter provided a paper outlining recently published research. Topics covered settlement conferences; supervision orders and special guardianship; divorce; mothers' experiences of involuntary loss of care time in post-separation proceedings; mediation; and access to justice.

It was noted that Daniel Monk and Jan McVarish had accepted the invitation to give a presentation at a future meeting about their research on siblings, contact and the law.

## **8. Any other business**

Christina Blacklaws referred to her earlier comments regarding the innovation fund for LiPs strategies and asked members to consider innovative ways to improve processes, particularly during pre-proceedings. The Council may wish to put forward a submission as to where resources should be focused. These need not necessarily involve digitisation. She added that the Law Society would be meeting Barclays on 10 June to begin harvesting ideas and suggested that an FJC member may wish to attend.

Mrs Justice Theis informed members about courtroom science primers launched by the Royal Society to assist the judiciary when handling scientific evidence in the court room. Two primers had been published so far on DNA analysis and forensic gait analysis. Future primers on the topics of statistics and the physics of the vehicle collisions are planned.

The Royal Society would welcome ideas for further primers.

## **9. Presentation**

Professor Beth Neil from the University of East Anglia spoke about her study, *The Joys and Challenges of Adoptive Family Life: A Survey of Adoptive Parents in the Yorkshire and Humberside region*.

Members found the presentation extremely informative and suggested that it might be a topic for the next conference. It was noted that CoramBAAF held a recent conference looking at birth parent contact and associated issues.