



## **Family Justice Council**

### **Minutes of the Council Meeting 28 January 2019, Royal Courts of Justice**

#### **Present:**

Sir Andrew McFarlane, Chair  
Neal Barcoe, Ministry of Justice  
Annie Bertram, Parents and Relatives member  
Melanie Carew, Cafcass  
Alex Clark, Secretary to the Council  
Rebecca Cobbin, HMCTS  
Jaime Craig, Child Mental Health Specialist  
Judith Crisp, District Judge  
Alistair Davey, Welsh Assembly Government  
Maud Davis, Public Law Solicitor  
Colette Dutton, ADCS  
Louise Fleet, Magistrate  
Sarah Flynn, Office of the Children's Commissioner  
Rosemary Hunter, Academic,  
Andrew Jones, Ministry of Justice  
Ify Okoye, Department for Education  
Matthew Pinnell, CAFCASS Cymru  
Jane Probyn, Circuit Judge  
Karen Simmons, ADCS  
Stuart Smith, Justices' Clerk  
Lucy Theis, High Court Judge  
Malek Wan Daud, Barrister  
Natasha Watson, Public Law Solicitor  
Claire Webb, Family Mediator  
David Williams, High Court Judge

#### **Secretariat:**

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

#### **Apologies:**

Christina Blacklaws, Private Law Solicitor  
Alison Kemp, Paediatrician

#### **Guest speakers:**

Amy Summerfield, Ministry of Justice  
Sam Lindsay, Ministry of Justice

### **Announcements:**

- The Council was sad to learn that District Judge Nicholas Crichton had recently passed away. As a highly valued member of the Council from 2004 until his retirement in 2013, he had contributed so much, particularly in his work to promote the voice of the child. As the chair of the Council's Voice of the Child Sub-Committee, his principal achievement was the Guidelines for Judges Meeting Children, published in 2010 (<https://www.judiciary.uk/publications/judges-meeting-children/>). His other great achievement was the establishment of the Family Drugs and Alcohol Court (FDAC). The President had written to his family on behalf of the Council and a memorial service was expected to take place on Wednesday 13 March. The Chair pointed out a letter published in the Guardian from District Judge David Simpson – <https://www.theguardian.com/law/2019/jan/22/letter-nicholas-crichton-obituary>
- Elizabeth Isaacs' term as the Silk member had recently ended. She had served with distinction for four years and the Council thanked her for her contribution – most notably the work involved in taking forward the recommendations of Professor Judith Masson's report on Lessons from Research for the Judiciary in Public Law Cases. Elizabeth had kindly offered to continue to liaise with the Judicial College until the work was seen through to completion. The Council wished her well for the future. A recruitment campaign was being organised to identify a new Silk member.
- The Council welcomed two new members – Annie Bertram as the representative for Parents and Relatives' Interests and Claire Webb, the new Mediator member.

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

The minutes were approved, pending minor amendments.

### **Matters arising:**

Domestic abuse: The MoJ had published its response to the consultation *Transforming the Response to Domestic Abuse* and had issued a draft Domestic Abuse Bill identifying several new measures. It was also publishing a refreshed Violence against Women and Girls Strategy.

LASPO review: Rosemary Hunter and Maud Davis had met MoJ officials to discuss in detail the points raised in the Council's submission. The Government's response to the review was expected shortly.

Local Family Justice Boards: Following concerns raised at the last meeting, the MoJ had confirmed that family law professionals should be a part of the LFJBs and that academics were on the list of suggested members. It was noted that parents and relatives were currently not represented on the Boards but this would be discussed with the FJB. The LFJB terms of reference and membership had been circulated for information and members were asked to notify the MoJ if they felt that the LFJBs were not fulfilling their role.

Cross-examination of expert witnesses by litigants in person: Following Jaime Craig's review into the concerns of legal practitioners, Jane Probyn had spoken to Chris Simmons at

the Judicial College about potential training in this area. He welcomed the idea and was keen to see some possible scenarios. Jaime Craig would explore the options. Alex Clark had spoken to the Legal Aid Agency to highlight the need for funding and fast tracking cases involving vulnerable adults. It was felt that the Agency was not fully aware of the scale of the problem and Alex would liaise further.

Rosemary Hunter suggested that she raise awareness of these issues as part of her presentations on recent research. She also noted that the draft Domestic Abuse Bill would allow judges to prevent direct cross-examination.

### **3. Business Plan**

Updates were provided as follows:

#### **Activity 1: Lessons from Research for the Judiciary**

Rosemary Hunter had received positive feedback from the Judicial College. She had spoken to Chris Simmons who confirmed that private law training would now incorporate a regular item on recent research.

#### **Activity 2: Judgecraft in relation to Litigants in Person**

The re-recording of the FHDRA video for District Judges had recently taken place. Following a trial run last October, the video now followed a new format in which broad, open-ended questions were used to encourage judicial discussion. The recording of the GRH and DRA videos for District Judges had also taken place. The recording of the FDR video was scheduled for 25 March. Further videos for magistrates were being discussed with Louise Fleet and Stuart Smith. Consideration would also be given to producing videos for other professional bodies, such as Cafcass.

The videos would also be available on the judicial intranet and it was suggested that they also be shown at a future Council meeting.

#### **Activity 3: Child Protection Mediation**

Judith Crisp and Claire Webb had met to discuss how to take this activity forward. It was noted that the work had been put on hold pending the outcome of the Care Crisis Review. Members agreed that the work should be reinstated but in conjunction with the Pre-Proceedings Working Group.

#### **Activity 4: Pensions Advisory Group**

The next meeting of the group would take place the following day. Its draft report was almost complete pending a few outstanding issues and it was expected to be submitted for Council approval at the Executive Committee meeting in March. Clarification was sought over the status of such approval and it was agreed that the Council should be asked to simply *endorse* the report. A number of copies would be printed in hard copy although the amount had yet to be confirmed. The full version ran to 140 pages. The version to be used for the Advicenow website comprised five pages.

### **Activity 5: Covert Recordings**

Natasha Watson indicated that she would be circulating the draft guidance to certain stakeholders for feedback. It would cover both covert and overt recordings of private individuals (adults, children and professionals). Written in plain English, the guide would be suitable for both professionals and parents. The full draft would be circulated to the working group before being finalised for the next Council meeting in May. It may also be considered for inclusion at the President's Conference.

It was noted that NAGALRO had recently published its own guidance on overt recordings.

### **Activity 6: Pre-proceedings**

Activity had been put on hold pending enquiries into what the Department for Education and the Ministry of Justice were doing in this area. It was now confirmed that pre-proceedings would be part of the wider work of the Family Justice Board and that the MoJ was collating examples of best practice. It was noted that Keehan J had also been asked to set up a separate group to look at public law proceedings. It was agreed that as the other groups were not intending to produce guidance, the FJC should continue drafting its own but to keep others informed of progress, inviting comment accordingly.

### **Activity 7: Communications and dissemination of FJC work**

Malek Wan Daud circulated a paper in which he expressed concerns about the lack of awareness, amongst the legal professions and the public, about the work of the Council. Its website was not being used to its full potential and was difficult to find. It was noted that the Judicial Office Communications Team was responsible for the design and management of the Council's website and that, over the years, the site had undergone several reincarnations resulting in the loss of some documents. The problems had now been compounded by staff changes in the communications team.

It was agreed to create a list of tasks and determine, with the communication team, exactly what was achievable. Easy fixes would include adding the Council logo and, with his permission, the President's photograph to the website. Links to the website should feature on all Council documents. Other aspects would be explored, including the potential for a search tool specifically within the website.

A strategy should be developed to encourage other organisations (e.g. Magistrates Association Family Courts Committee, Family Law and the LFJBs) to promote the work of the Council. Members' own constituencies would also provide important communication channels.

David Williams asked for the use of Twitter to be reconsidered, particularly as items can be pre-programmed using TweetDeck. Annie Bertram agreed that Twitter would make the Council more accessible to parents and relatives and would email Malek Wan Daud with her thoughts. Stuart Smith indicated that the Leicestershire FJB had its own independent website and Twitter account.

It was agreed that Malek Wan Daud would ascertain the website footfall, determine if podcasts of events were being accessed and seek the President's permission to use his photograph. The Business Plan would be published on the website and, in due course, an annual report should also be made available. Links to partner organisations should be

pursued and the potential for a Twitter account and website management training should be discussed further with the Secretariat.

### **Activity 8: LASPO review**

This was discussed under Matters Arising.

### **Activity 9: Domestic abuse**

The consultation on best practice was ongoing and the group would be meeting after the Council meeting to discuss progress and consider next steps. The responses would be fully considered at a future meeting in March, after which the drafting of a new framework would begin.

### **Activity 10: Special guardianship**

The group had met in December and continued to liaise with the Family Justice Observatory and CoramBAAF with regards to its evidence review on the use of special guardianships. This was expected to conclude at the end of February. The group was also exploring various datasets around special guardianship to identify any issues of reliability. It was also responding to a request from the President for views on exceptions to the 26 week timeframe and would submit a report by mid-February.

### **Activity 11: Medical mediation**

Work had not yet begun due to other pressures. However, Jaime Craig had spoken to paediatric psychologists who had confirmed that mediation in their areas was variable and that no protocols were in place. The Council noted that they would be useful contributors to the work of this group. David Williams was considering a proposal by Alison Kemp to co-opt a clinician from a paediatrician intensive care setting as this is where most cases occurred.

## **4. Family Justice Board**

Alex Clark had provided an overview of the work of the Council at the recent meeting of the Family Justice Board. He felt that the Ministers had welcomed the information and showed a keen interest in the type of issues currently being considered by the Council.

He noted that the level of co-operation between the Ministry of Justice and the Department for Education had improved and pointed particularly to the joint work being carried out on public law issues. Neal Barcoe added that the main focus was to look at rising volumes and variation in public law and to explore whether the right cases were going to court. He explained that the number of proposals were being considered across three main areas:

- Better preparation of cases before court and diverting cases from court where appropriate.
- Making better use of wider family networks and appropriate alternatives to court.
- Promoting consistent and appropriate decisions in court.

He indicated that feedback from the Family Justice Board had been positive and it would be developing a programme to bring the work together. It hoped to influence a change of behaviours in the system. The issues would be discussed further at the LFJB conference on 5

March. Ministers would then be asked to approve the work programme at the next FJB meeting in May.

Maud Davis asked Neal Barcoe to note that in private law, safeguarding issues were not being identified because of the lack of lawyers. Natasha Watson highlighted the need for all those delivering the service to use the Public Law Applications to Order (PLATO) tool. Annie Bertram commented that local authorities vary enormously and that the inconsistencies meant that it was a lottery for some families. Parents needed to know what to expect.

## **5. Conference**

The conference would take place on 12 March at Prince Philip House, Carlton House Terrace in central London. Its title was *After 30 years of the Children Act, has the threshold for state intervention changed?*

The programme was almost finalised and consideration was now being given to how the breakout sessions would be managed. The Conference Planning Group was considering inviting two Designated Family Judges with similar demographics to discuss different outcomes in care proceedings.

Invitations to attend had been issued to a wide range of stakeholders and there had been a promising number of applications to date. Several Council members would also be attending.

## **6. Research update**

Rosemary Hunter provided an overview of the following research:

- Karen Broadhurst et al – *Born into Care: Newborns in Care Proceedings in England*
- Daniel Monk and Jan McVarish - *Siblings, contact and the law: An overlooked relationship?*
- Judith Masson et al - *Reforming Care Proceedings 2: Children's Outcomes*
- Felicity Kaganas - *Parental involvement: A discretionary presumption*
- Rosemary Hunter, Adrienne Barnett, Felicity Kaganas and Shazia Choudhry (eds) - *Journal of Social Welfare and Family Law* - special issue on contact and domestic abuse.

It was noted that Beth Neil would be invited to speak at the next meeting about *A survey of adoptive families: Following up children adopted in the Yorkshire and Humberside region*. Daniel Monk and Jan McVarish would be asked to give a presentation at a future meeting about their research on siblings, contact and the law.

## **7. Any other business**

Rosemary Hunter informed the Council that she was on the President's Private Law Working Party, chaired by Cobb J, which would be looking at the PD 12B review. She would monitor developments and report back to the Council. Matthew Pinnell was also on the working party.

## **8. Presentation:**

Amy Summerfield and Sam Lindsay of the Ministry of Justice gave a presentation on the Public Law Application to Order (PLATO) tool, a database of child-level data shared by the MoJ, DFE and Cafcass. The presentation illustrated how the tool could be used to present analysis of the patterns of applications and orders made across geographical areas and over time.

## **9. Presentation:**

Professor Karen Broadhurst, Professor of Social Work and Claire Mason, Senior Research Associate at Lancaster University spoke to the Council about their recent research *Born into care: newborns in care proceedings in England*.

<http://www.nuffieldfoundation.org/news/born-care-study-uncovers-scale-newborn-babies-care-proceedings-england>