



## **Family Justice Council**

### **Minutes of the Council Meeting 29 July 2019, Royal Courts of Justice**

#### **Present:**

Lucy Theis, High Court Judge, Acting Chair  
Neal Barcoe, Ministry of Justice (by phone)  
Annie Bertram, Parents and Relatives Representative  
Melanie Carew, Cafcass  
Rebecca Cobbin, HMCTS  
Jaime Craig, Child Mental Health Specialist (by phone)  
Judith Crisp, District Judge  
Maud Davis, Public Law Solicitor  
Louise Fleet, Magistrate  
Rosemary Hunter, Academic,  
Alison Kemp, Paediatrician (by phone)  
Sam Momtaz, Silk  
Jane Probyn, Circuit Judge  
Stuart Smith, Justices' Clerk  
Sam Sprague, Acting Secretary  
Malek Wan Daud, Barrister  
Natasha Watson, Public Law Solicitor (by phone)  
Claire Webb, Family Mediator  
David Williams, High Court Judge

#### **Secretariat:**

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

#### **Observer:**

Mark Barford, Assistant Private Secretary to the President of the Family Division

#### **Apologies:**

Sir Andrew McFarlane, Chair  
Kate Berry, DfE  
Christina Blacklaws, Private Law Solicitor  
Colette Dutton, ADCS  
Matthew Pinnell, CAF/CASS Cymru

#### **Guest speaker:**

Professor Nick Hopkins and team, Law Commission.

## **Announcements:**

Sam Momtaz QC was welcomed as the new Silk member. Sam acts in all cases of family law involving children and has particular expertise in those cases which involve risk of harm from radicalisation, death and non-accidental injuries, allegations of serious sexual abuse, child trafficking and cross-examination of expert and vulnerable witnesses.

A warm welcome was also extended to Sam Sprague, the acting Secretary to the Council.

Karen Simmons had tendered her resignation from the Council following her retirement as ADCS in Newcastle. Karen was thanked for her contribution to the work of the Council and was wished a long and happy retirement. A recruitment campaign would not be necessary as Colette Dutton, also an ADCS member, remained on the Council.

It was noted that Jaime Craig, Rosemary Hunter, Alison Kemp and Stuart Smith had recently been re-appointed to the Council.

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

The minutes were approved.

It was noted that all future minutes would be circulated for amendments and approved for publication shortly after the meeting rather than wait until the next meeting.

## **Matters arising:**

*Action points:* The majority of action points had been completed. Those outstanding would be discussed under the Business Plan item.

### *Cross-examination of expert witnesses by litigants in person:*

Jaime Craig had made enquiries with the Domestic Abuse Policy lead at the Ministry of Justice. It was hoped that cross-examination provisions in the Domestic Abuse Bill might also help address the concerns of expert witnesses being cross-examined by vulnerable LiPs. Jaime would be attending a meeting with the MoJ in September to discuss the matter further and extended the invitation to other members.

Jaime also informed the Council that following enquiries with Civil and Family Legal Aid team at MoJ, it appeared unlikely that exceptional case funding would be automatically available to parents in this situation. It may be available in some cases, but each application would be considered on a case-by-case basis rather than there being any general recognition that ECF should be made available in these circumstances. It was noted that the decision that a psychological/psychiatric assessment was necessary could be considered good evidence of vulnerability and that it may be helpful to highlight this.

Jaime and Jane Probyn had been invited by the Judicial College to give presentations as part of judicial training later in the year. The relevant links would be made available on the FJC website.

## **3. Business Plan**

Updates were provided as follows:

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

There had been no further developments with regard to the magistrates' FHDRA video. However, the judges' videos were now being incorporated into training packages and would be published on the Judicial College's e-learning site in the autumn. The videos had received outstanding feedback from the College. The next stage would be to observe the training packages in action in order to identify any consensus around good practices.

It was suggested that the stated outcome in the Business Plan was misleading as the videos were not designed to provide direct support to LiPs. Annie Bertram pointed out that there were no similar approved resources for LiPs available online. It was noted that the Council had once carried out a review into online support but did not have the time or resources to continue to monitor the position. It was suggested that the Family Justice Board might wish to consider the wider issue about support for LiPs, including revisiting the possibility of an authoritative website for LiPs.

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

The working group had been asked to consider setting up a pilot scheme to look at mediation both pre and during proceedings. It had identified that the key issue was one of finance and was therefore making enquiries as to potential sources of funding. An approach had been made to the Innovation Fund but it had transpired that this was only available for technological initiatives. The group had also liaised with the Legal Aid Agency which would be able to assist in funding parents with CPM where they met the financial eligibility criteria.

Claire Webb had met the Hampshire and Isle of Wight local authorities who confirmed that they would wish to consider CPM. They had agreed that a pilot would be beneficial but had estimated its cost at £100,000.

The Council agreed that a pilot scheme was essential and it was suggested that the Ministry of Justice might wish to put forward a recommendation in this respect. Proposals should also be incorporated into the Council's response to the Public Law Working Group's consultation, accompanied by Judith Crisp's paper.

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

*"A Guide to the Treatment of Pensions on Divorce"* for the judiciary and legal advisers was published on the Nuffield Foundation website on 1 July 2019.

A simple guide for lay people, for which the Council had committed £2500, was expected to be published on the Advicenow website by the end of September. However, Advicenow had indicated that it hoped to use the money to conduct an initial scoping study to determine exactly what was needed for LiPs. Given that the Council's funding was not intended for this purpose, the PAG was instead seeking additional funding from Nuffield. If it was not amenable, further discussions would need to take place with Advicenow to encourage a rethink, or it might be necessary to identify another provider to produce the lay guide. A further concern was Advicenow's proposed six-month timeline for the scoping project and publication, although working with an alternative provider might take as long. A decision would be made by the Executive Committee once clarification had been received regarding Nuffield funding.

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

Natasha Watson had circulated the draft guidance for members' consideration. It covered different types of covert recordings, theoretical and practical issues and recommendations regarding overt recordings. The guidance was still to be considered by the Family Justice Young People's Board and awaited a response from the Information Commissioner's Office regarding data protection legislation. Although the guidance should not be considered a silver bullet, it would provide a much needed steer for the courts and professionals.

Annie Bertram asked if there would be guidance for family members with regards to publishing recordings on social media. Natasha indicated that the guidance would include a short section for families and would give this further consideration.

A meeting of the working group would be arranged for September.

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

This activity was on hold pending the outcome of the Public Law Working Group's consultation.

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

The working group, in consultation with the Secretariat, had agreed to launch a pilot Twitter account in October. It would be monitored for a year to allow sufficient time to assess its footfall and the number of users accessing the FJC website via the Twitter account. Content would be published once a month and monitored once a week. Enquiries would be made with the Judicial Office regarding software to filter out offensive content. Annie Bertram had drafted a social media policy, based on that of the Judicial Office, which would make it clear that the account would be for information purposes only and that no dialogue would be entered into. Consideration should also be given to a policy for re-Tweeting – both by the Council and by others. Maud Davis would consult her firm's own policy on this with a view to sharing. It was suggested that the account might be demonstrated at the next Council meeting.

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

Further sections of the guidance had been drafted. As the guidance had developed the working group had also identified the need for a toolkit and revision of forms. A full draft would be submitted to the Council for consideration at its next meeting. It was noted that the working group would operate alongside the government's Expert Panel, of which Rosemary was also a member.

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

The interim guidance was published on 24 May. Its primary purpose is 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. Further work was on hold pending the outcome of the Public Law Working Group consultation.

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

Cafcass was analysing its research into cases involving mediators and looking at when mediation was appropriate. A full discussion would take place once the analysis was complete.

#### **4. Presentation: Judgecraft videos**

Rosemary Hunter showed a selection of video scenarios, designed to assist the judiciary. These comprised a FHDRA with a Bench of Magistrates, Dispute Resolution Appointment with a District Judge and Financial Dispute Resolution Hearing with two LiPs.

Members welcomed the videos and acknowledged the amount of work involved in their production.

#### **5. The President's Public and Private Law working groups**

The interim reports and recommendations had been published and were open for consultation until 30 September 2019. Melanie Carew and Maud Davis agreed to draft the Council's response to the public law consultation, whilst David Williams, Jane Probyn, Judith Crisp and Annie Bertram would draft the response to the private law consultation. It was noted that as Rosemary Hunter was on the working group, she would not be directly involved in the drafting but was welcome to provide comments.

David Williams informed the Council that the Experts Working Group was drafting its report. He indicated that there was a role for the Council in helping experts in the family court and noted that the FJC Secretariat was responsible for the mini pupillage scheme. It was agreed that David Williams and Daphna Wilson would liaise further on the issue. Jaime Craig offered to promote the scheme amongst colleagues. It was agreed to look at the topic again at the October meeting.

#### **6. Family Justice Board**

The Board was now chaired by Wendy Morton MP (MoJ) and Kemi Badenoch MP (DfE). The next meeting would be held on 8 October and would take the new chairs through the Board's programme of work including the measures from the family justice review, private law reform and the public and private law consultations.

Paula Adshead had circulated a draft summary of Council business to be submitted to the next Board meeting. The Council approved the summary pending any updates nearer the time.

#### **7. Section 7 template and guidance**

Natasha Watson asked the Council to endorse the Sussex template and accompanying guidance in relation to S7 reports.

The initiative was set up by Sussex local authorities and Cafcass, following concerns that S7 reports were often inadequately completed by junior social workers. The template and guidance were produced to help resolve the issue and were rolled out across Sussex along with relevant training.

Jane Probyn welcomed the guidance but felt it needed a distinction between contact in public and private law proceedings. Natasha Watson confirmed that it would be included in the programme. Sam Momtaz and David Williams stressed that the guidance should distinguish

between fact-finding and welfare hearings and agreed to draft a paragraph accordingly. Natasha Watson noted Annie Bertram's suggestion that the guidance should also address issues from the parents' perspective and would consider including this in the training programme.

The Council agreed to endorse the template and guidance pending the above points. Cafcass and ADCS would be asked to re-endorse the documents. Once finalised, they would be publicised on the Council's website and brought to the attention of the national and local Family Justice Boards.

## **8. Event planning 2019**

The annual debate was scheduled to take place from 5pm to 7pm on Wednesday 4 December in central London.

Having considered several options, it was agreed that the question of whether lawyers and courts were necessary in private law matters would be the most topical subject, particularly given the work of the Private Law Working Group. The debate might usefully consider the themes emerging from the consultation process. The Executive Committee was tasked with exploring the concept further and suggesting topics and speakers to the Council.

The all-day conference would be held in Bristol on Tuesday, 24 March 2020. It was agreed that the theme should be adoption, incorporating issues such as birth family contact, DNA testing kits, Facebook searches and adoption in other jurisdictions. A planning committee was set up comprising Mrs Justice Theis, Malek Wan Daud, Annie Bertram, Jane Probyn and Sam Momtaz. The committee would produce a draft programme for the Council to consider at its next meeting. All Council members were encouraged to submit ideas for speakers.

## **9. Research update**

Rosemary Hunter provided an outline of recent research studies. These included Danielle McLeod's review of the impact of coercive control on children and young people and Matthew A Jay's report on children in private family law cases who returned to court in public law cases or subsequent private law proceedings.

It was noted that Daniel Monk and Jan McVarish would be speaking at the October meeting about their research on siblings, contact and the law.

## **10. Any other business**

Annie Bertram offered to give a presentation at a future meeting on parental advocacy. She would discuss further with Rosemary Hunter.

## **11. Law Commission reviews**

*Weddings:* Although wedding law was not included in the Commission's programme of potential law reforms, it would be carrying out a consultation on the issues in spring 2020. Representatives from the Law Commission were at the meeting to provide further information.

Looking at how and where people could marry, the aim of the review was to encourage a more simple, modern law covering notices, venues, content and registration. The Commission had issued an invitation to meet with the Council to discuss how a reformed

wedding law could work. In particular, it was looking for input on the breakdown of marriages and illegal marriages. The Council confirmed that it was keen to be involved and would form a group to meet with the Commission. Sam Momtaz agreed to lead the group with contributions from Maud Davis, Rosemary Hunter, David Williams and Annie Bertram.

Surrogacy: Law Commissioner, Professor Nick Hopkins, and his team gave a presentation to the Council about its report on surrogacy – chosen by the Commission as one of the areas for potential reform. A consultation was underway to seek views on the proposed revision of surrogacy laws. The closing date for submissions is 11 October. Mrs Justice Theis and Sam Momtaz volunteered to draft a response on behalf of the Council.