



Family Justice Council

Minutes of the Council Meeting 14 October 2019, Royal Courts of Justice

Present:

Lucy Theis, High Court Judge, Acting Chair
Neal Barcoe, Ministry of Justice
Annie Bertram, Parents and Relatives Representative
Christina Blacklaws, Private Law Solicitor
Melanie Carew, Cafcass
Rebecca Cobbin, HMCTS
Jaime Craig, Child Mental Health Specialist
Judith Crisp, District Judge
Maud Davis, Public Law Solicitor
Colette Dutton, ADCS
Rosemary Hunter, Academic,
Alison Kemp, Paediatrician
Sam Momtaz, Silk
Ify Okoye, Department for Education
Jane Probyn, Circuit Judge
Stuart Smith, Justices' Clerk
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:

Maria Kavanagh

Apologies:

Sir Andrew McFarlane, Chair
Louise Fleet, Magistrate
Matthew Pinnell, CAFCASS Cymru
Sam Sprague, Acting Secretary
Malek Wan Daud, Barrister

Guest speakers:

Professor Daniel Monk and Dr Jan Macvarish, Birkbeck College, University of London

Announcements:

Welcome: Maria Kavanagh was welcomed as an observer. Maria had recently been selected as the new Secretary to the Council and was expected to be in post later in the year. The Council thanked Sam Sprague for covering the role since Alex Clark's departure.

Re-appointments: Maud Davis and Natasha Watson had recently been re-appointed to the Council as the Public Law Solicitor members.

2. Minutes of last meeting:

The minutes of the last meeting had been approved out of committee and published on the Council's website.

Matters arising:

Action points from last meeting: Most of the action points had been completed. Those outstanding were covered elsewhere in the agenda.

Consultations: the Council had responded to several consultations since it last met. The contributors were thanked as follows:

- *RCPCCH guidance on perplexing presentations and fabricated illness* - Alison Kemp, Jaime Craig and Colette Dutton.
- *Public Law* consultation – Melanie Carew and Maud Davis.
- *Private Law* consultation – David Williams and Jane Probyn.
- *Civil Justice Council consultation on vulnerable witnesses and parties* – Rosemary Hunter, Jaime Craig and Sam Momtaz.
- *Law Commission consultation on surrogacy* – Sam Momtaz and Lucy Theis.

Law Commission project on wedding law reform: It had been agreed at the last meeting that a working group, led by Sam Momtaz, would contribute to the project. Sam would attend a meeting with the Commission on 7 November to discuss further.

Cross-examination of experts by vulnerable witnesses: Jaime Craig, Rosemary Hunter and Sam Momtaz would be meeting officials from the MoJ on 22 October to discuss cross-examination provisions in the draft Domestic Abuse Bill. Jaime Craig and Jane Probyn were finalising their presentations for Judicial College training in late October. The links would be published on the Council's website in due course.

The President's Experts working group: the report and recommendations were expected in early 2020 and would be presented at the President's conference. David Williams had noted at the last meeting that the FJC Secretariat ran a mini pupillage scheme. It was important to publicise the scheme and to inform Daphna Wilson of any interested parties. It should also be brought to the attention of the LFJBs' training sub-committees. David Williams and Daphna Wilson would meet to discuss the matter further on 16 October. Mrs Justice Theis would attend the meeting if available.

Section 7 template and guidance: at the last meeting, the Council had endorsed the Sussex template and accompanying guidance subject to the inclusion of a paragraph to distinguish between fact-finding and welfare hearings. Sam Momtaz had agreed to draft the relevant section. The Council would seek to endorse the final version out of committee or at its next

meeting. The amended documents would also require Cafcass endorsement. Natasha Watson and Annie Bertram would discuss making the guidance accessible for litigants in person (LiPs).

It was suggested that Section 37 would also benefit from similar guidance. Natasha Watson agreed to send S37 to Sam Momtaz, Colette Dutton, Jane Probyn, Annie Bertram and Maud Davis for their consideration.

Recruitment: The Private Law Solicitor vacancy was being advertised. Christina Blacklaws would continue in post until her successor was in place.

There were no further matters arising that were not covered in the agenda.

3. Business Plan

Updates were provided as follows:

Activity 1: Judgecraft in relation to Litigants in Person

The DJ videos would shortly be incorporated into a training package and made available on the Judicial College e-learning site. Rosemary Hunter had provided an audio introduction for the training package. The videos would also be used in the induction training which would take place at the end of October. The process to begin observation and evaluation of the training packages would begin at the induction training course.

Feedback had indicated that the videos were proving very useful. Stuart Smith added that they had been very well received at a recent private law induction course for DJs.

Activity 2: Child Protection Mediation

A meeting had taken place earlier that day with the Nuffield Foundation to consider the potential pilot scheme and options for funding. It was suggested that a feasibility study be conducted involving local authorities and the judiciary. However, this could cost around £40,000. It was agreed that this was now outside the Council's remit and it would need to identify another body and commission experts to take this forward. The next step would be for Judith Crisp to draft a concept paper to submit to the Nuffield Foundation. She would consult Colette Dutton and Natasha Watson and check the outcome of the public law consultation before sending a draft for the Council's consideration.

Some concerns were raised about the role of mediation, especially where family group conferences were already in place, and how local authorities were expected to fund it. It was noted that there had been a similar pilot 20 years ago and that child protection mediation did take place in some areas but there was no uniformity.

It was noted that the outcome on the Business Plan should be made more realistic and would be re-worded accordingly.

Activity 3: Pensions Advisory Group (PAG)

PAG had requested further funding from the Council for printing an additional 420 copies of the guidance on pensions on divorce, for all salaried DJs. The Executive Committee had declined as it was already funding publication of the Advicenow lay guide. The Nuffield

Foundation had now agreed to provide the money for the extra printed copies as well as funding the scoping exercise for the lay version. It was noted that Advicenow may extend the publication date beyond April 2020 and that this should be monitored.

Activity 4: Covert Recordings

Jaime Craig was thanked for his feedback following a visit to the Family Justice Young People's Board – their comments would be reflected in the guidance. A lawyer had been identified to re-draft some sections of the guidance in accordance with General Data Protection Regulations.

It was noted that Malek Wan Daud would now co-lead the project with Natasha Watson and that Sam Momtaz had joined the working group. The group would meet later this year to consider the draft guidance. The final draft would then be submitted to the Council for consideration at its January meeting. Natasha Watson confirmed that the recording of children was the focus of the guidance but there would be an additional section on the recording of professionals. The outcome on the Business Plan would be amended to reflect this.

Activity 5: Pre-proceedings

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

Activity 6: Communications and dissemination of FJC work

A meeting would take place shortly between the Secretariat and the Communications Team to discuss setting up the FJC Twitter account. A number of improvements had been made to the Council's website and a demonstration would follow later in the meeting.

Work to resurrect the relationship with the Family Justice Board and the Local Family Justice Boards was raised under item 6.

Activity 7: Domestic abuse

The response to the Civil Justice Council's consultation on vulnerable witnesses had been submitted. The draft Domestic Abuse Bill had been carried over and the work of the MoJ Expert Panel was expected to conclude early next year – both would continue to be monitored for any impact they might have on the Best Practice guidance.

Judith Crisp and Rosemary Hunter had drafted a paper and presentation for inclusion in Judicial College training on domestic abuse in financial proceedings. These would also feature in Family Law.

The Best Practice guidance was discussed later in the meeting.

Activity 8: Special guardianship

The review by the Nuffield Family Justice Observatory had been published in September - https://www.nuffieldfjo.org.uk/news/reform_special_guardianship_to_protect_and_support_children_and_their_carers

A meeting had recently taken place with Mr Justice Keehan, Chair of the Public Law Working Group (PLWG). It was proposed that there would be one definitive guidance, to be published by the PLWG, but incorporating the Council's interim guidance on special guardianships. A further meeting with Keehan J would take place on 16 December with a view to the guidance being published in January 2020.

It was not clear whether Mr Justice Keehan had yet spoken to the Adoption and Special Guardianship Leadership Board (ASGLB), chaired by Andrew Christie, about the PLWG report, and whether it was happy to endorse the PLWG's SGO best practice guidance. Mr Justice Williams would check with Keehan J that Andrew Christie would be included in deliberations. The Council's working group would consider the PLWG recommendations in late November.

Activity 9: Medical mediation

Initial investigations had indicated that some medical mediation already took place but there was no standard practice. The group would arrange its first meeting to draft its terms of reference.

4. Domestic abuse – Best Practice Guidance

The draft guidance had been circulated to members. The original plan had been to pilot a Specialist Domestic Abuse Court but as domestic abuse featured in so many cases, it was ultimately agreed to produce a best practice guide for all courts. An initial consultation with professionals had been carried out to help inform the draft guidance.

There was still some work to do before the draft could be finalised, including looking at the role of McKenzie Friends. The draft guidance would be sent out for a second, wider consultation in early November with a deadline for responses by the end of the year. The guidance would be finalised in spring or early summer of 2020 after the Domestic Abuse Bill would have gone through and the Experts Panel and the Private Law Working Group would have reported.

The Council was informed that this project had begun before work on the draft Domestic Abuse Bill and the MoJ Experts Panel had started. It was not clear whether either the Panel or the Private Law Working Group would be in a position to respond formally to the consultation but a dialogue with them would still be necessary and would be maintained by Rosemary Hunter.

It was noted that the guidance would be aimed at professionals rather than LiPs. Annie Bertram was keen for there to be a separate document for LiPs and parents and relatives. However, others felt that there was already a lot of material online for litigants in person, some of which was already referred to in the guidance. It was suggested that a point should be added at 1.3 to make it clear that it was open to LiPs to reflect upon the guidance and to raise relevant issues when attending court.

5. Public and Private Law consultations

The Council had responded to both consultations. Natasha Watson reported that the Public Law Working Group was pleased with the qualitative material provided by the responses and would meet at the end of November, having re-drafted the report accordingly. The report was expected to be published in early 2020 along with a series of guidance.

The private law report would comprise two parts – out of and in court activities. Work on the first was proceeding, whilst the latter would await the report from the Experts Panel. Pilots were expected to be in place by summer 2020.

6. Family Justice Board

The Board was now chaired by Wendy Morton MP and Michelle Donelan MP, Ministers for the Ministry of Justice and Department for Education respectively. At its recent meeting, it had heard updates from its Performance Improvement Sub-Group, the family justice review, the DfE and the Family Justice Young People’s Board. The Council had submitted a summary of its current business to the meeting. Andrew Christie, Chair of the Adoption and Special Guardianship Leadership Board had spoken about safeguarding and recent adoption figures.

There had been concerns that there was no obvious body to oversee the extensive reforms that were taking place. As a result, a new multi-agency implementation group was expected to be set up in early 2020 to take forward and evaluate key areas of work.

To help resurrect the Council’s relationship with the Local Family Justice Boards (LFJBs), it was proposed that the Council’s business summaries could be cascaded to the LFJBs and that these might feature as a standing agenda item. In addition, enquiries and proposals could be submitted for LFJBs’ feedback and steers given for topics at their training events. It was further suggested that Council members could attend LFJB meetings to publicise the Council’s work. The proposals would be put to the FJB at its next meeting in January.

7. FJC events

Paula Adshead informed members that three of the four panellists for the debate had now been secured - Mavis Maclean, Senior Research Fellow in Law at Oxford; Jane Robey, Chief Executive of National Family Mediation; and DDJ Heather MacGregor.

Several speakers had accepted the invitation to speak at the conference in March including Lady Hale who had kindly agreed to give the Bridget Lindley Memorial Lecture.

8. Research update

Recently published research included:

- Judith Harwin, John Simmonds, Karen Broadhurst and Rebecca Brown, ‘Special Guardianship: A Review of the English Research Studies’: A useful document, bringing together and presenting a review of existing research studies on special guardianship.
- Gemma North, ‘Assessing for bruises on the soul: Identifying and evidencing childhood emotional abuse’: Describing social workers’ difficulties and lack of confidence in reporting on emotional abuse in child protection cases.

- Rajnaara Akhtar, 'Plural approaches to faith-based dispute resolution by Britain's Muslim communities' (2019) 31(3) *Child and Family Law Quarterly* 189-210: A study of the views of British Muslims on faith-based dispute resolution forums.
- Kate Ryan, 'More than a third of men and women in UK admit to being in a coercive relationship' [2019] (July) *Family Law*: The Council felt that this research was not reliable as it failed to reflect legal definitions of coercive control. It reproduced some of the well-known problems of the measurement of physical violence by asking about any individual incidents rather than looking at the frequency and severity of the violence.

It was agreed that there were currently no further academics to invite to give a presentation to the Council. Annie Bertram and Dr Gupta had offered to give the next presentation about parental advocacy, and would discuss this with Rosemary Hunter.

9. Website demonstration

Daphna Wilson had made several improvements to the website over the summer, including the addition of the Council logo and members' photos. She gave a demonstration on the changes made to date and was thanked for her work.

10. Any other business

Volunteers were sought to attend two forthcoming events. Melanie Carew and Colette Dutton would attend the annual Civil Justice Council conference on access to justice for those without means and Annie Bertram would attend the Westminster Legal Policy Forum on next steps for family justice.

11. Presentation: Siblings, contact and the law: an overlooked relationship?

Professor Daniel Monk, Professor of Law and Dr Jan Macvarish, Associate Research Fellow provided an overview of their recent research into contact between siblings in public law.

The research can be found at:

<https://www.nuffieldfoundation.org/sites/default/files/files/Siblings%20Full%20Report%202018.pdf>

The link to the article on Birth Relationships after Adoption – Is There a Role for Article 8 by Sally Hansen is at:

<file:///C:/Users/wzz89w/AppData/Local/Microsoft/Windows/INetCache/Content.Outlook/T6O8LLIH/Sarah%20Hansen%20CFLQ.pdf>

*** Next meeting: Monday, 27 January 2020 ***