



Family Justice Council

Minutes of the Council Meeting held on 27 April 2020 (by Skype)

Present:

Sir Andrew McFarlane, Chair
Lucy Theis, High Court Judge, Acting Chair
Fatima Ali, Department of Education
Jenny Beck, Private Law Solicitor
Annie Bertram, Parents and Relatives Representative
Melanie Carew, Cafcass
Rebecca Cobbin, HMCTS
Jaime Craig, Child Mental Health Specialist
Judith Crisp, District Judge
Maud Davis, Public Law Solicitor
Colette Dutton, ADCS
Louise Fleet, Magistrate
Rosemary Hunter, Academic,
Maria Kavanagh, Secretary to the Council
Sam Momtaz, Silk
Matthew Pinnell, CAFCASS Cymru
Jane Probyn, Circuit Judge
Natasha Watson, Public Law Solicitor
Claire Webb, Family Mediator

Secretariat:

Paula Adshead
Daphna Wilson

Apologies:

Neal Barcoe, Ministry of Justice
Alison Kemp, Paediatrician
Ify Okoye, Department for Education
Leigh Shelmerdine, Civil Justice Council
Stuart Smith, Justices' Clerk
Malek Wan Daud, Barrister
David Williams, High Court Judge

1. Covid-19 – impact on family court

Members discussed the impact of the pandemic on the family justice system. The key points included:

- Refugees were experiencing self-isolation difficulties.
- 'Silent help' was needed for domestic abuse victims.

- Referrals to child services had significantly reduced with the professional network of eyes and ears no longer being available.
- Children with an allocated social worker had the opportunity to go to school, but the take up of had been less than expected. This should be a critical element in care planning.
- Police referrals had increased.
- Local government had issued guidance relating to council responsibilities during the crisis: <https://www.local.gov.uk/tackling-domestic-abuse-during-covid-19-pandemic>.
- Concerns around child arrangements and parents/guardians health issues
- All face-to-face contact for children in care had stopped.
- Live video calls were not appropriate for under 2s.
- Local authority guidance to finding alternative ways for contact was a postcode lottery.
- Parents did not have the opportunity to demonstrate improvements in parenting ability.
- Uncertainty and anxiety were leading to old behaviours resurfacing.
- National guidance for parents was needed.
- Some applicants, particularly women, were finding remote hearings difficult and alternative ways of managing inter-party hearings were necessary.
- People understood the need for virtual contact and this was often taking place in the foster home. There was concern, however, that this might lead to children feeling uncomfortable in their place of safety.
- Some local authorities had offered their offices for remote hearings and had bought tablets with sim cards to be delivered where required.
- Impact on the 26 week timetable and additional burden on professionals.
- Good practice and innovative ways to facilitate contact should not be lost once the pandemic was over.

The President spoke about contact issues and the Department for Education (DfE) guidance, which stressed the need for contact to continue. Courts should manage these urgent issues and keep them under review.

The President made further points:

- Everyone had risen to the challenge of keeping the family justice system running.
- He was offering steers to the judiciary but was not dictating how they should work.
- The rapid review of remote hearings being conducted by Nuffield Family Justice Observatory was in progress.
- The Private Law Working Group had drafted a note for Designated Family Judges suggesting ways in which hearings for private law cases could be adjusted. This was awaiting clearance from the Lord Chancellor. It included the suggestion that, where there were no safeguarding issues, Cafcass could discuss with parties whether the case could be settled another way.
- Recovery would be gradual and remote hearings were expected to continue. He had asked Lord Justice Baker to form a working group to consider the recovery process for all professionals.

Mrs Justice Theis pointed to the DfE guidance and the operational meetings chaired by Jackie Tiotto, Cafcass, for best practice advice. She added that the judiciary were facing agonising decisions and that it was a challenging and complex situation for HMCTS to manage. She asked members to raise any operational issues with their local Designated Family Judge or Family Division Liaison Judge.

Non-means testing for legal aid: Jenny Beck raised concerns about the ability to access the justice system itself. She was calling for non-means testing of legal aid to be made available for victims of abuse seeking protection orders during the pandemic. This would avoid the additional burden of self representation and the need to complete the forms necessary to secure public funding from a means perspective. She would draft a paper for the Council's consideration.

Jenny added that there was an issue in listing emergency ex-parte hearings, with differing processes and time delays. People could not chase their application or risk a judge calling them when they might be at risk from the perpetrator. Free legal representation under lockdown was therefore especially important.

Nuffield Rapid Review: Rosemary Hunter raised concerns that the rapid review had focused on the process of hearings rather than actual access to the system. It was agreed that she and Mrs Justice Theis would discuss the matter out of committee.

Remote assessments: Concerns were raised about the appropriateness of remote assessments. Jaime Craig mentioned that the Association of Clinical Psychologists would soon be producing guidance for psychologists expert witnesses and he would share this with the Council.

2. Announcements

End of term: The Council noted that Stuart Smith, the Justices' Clerk member, would be stepping down in June following the end of his appointment. Stuart was thanked for his contributions to the Council, particularly his work on the Domestic Abuse Working Group, and was wished well for the future. A recruitment campaign to find a successor would begin shortly.

Junior Barrister: The process to recruit a new junior barrister had been postponed and the interviews were now being rescheduled for a later date. Malek Wan Daud had kindly agreed to continue in the role until a successor could be appointed.

3. Minutes of last meeting:

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

Matters arising:

Cross-examination of experts by vulnerable witnesses: A meeting had taken place with with MoJ officials to discuss cross-examination provisions in the Domestic Abuse Bill, focusing on issues around duty of care to both the litigant in person and the court, quality of evidence and how best to flag up the issue. Several suggestions were put forward, including rule change and practice directions, and an appropriate question in letters of instruction (LOI) to experts. It was suggested that a question could be added to Annex A of Practice Direction 25C which sets out specific questions in LOIs for mental health professionals. It was noted that the Law Society already had templates in place.

Conference: This would now take place on 22 January 2021. All speakers were able to commit to the new date.

RCPCCH consultation on Child Protection Service Delivery Standards: Alison Kemp, Jaime Craig and Colette Dutton were thanked for drafting a response.

AdviceNow projects: The two guides funded by the Council were now live on the Advicenow website – *How to Get legal aid for a Family Problem* and *Update to International Divorce*.

Section 7: Natasha Watson was asked to consult Cafcass Cymru when making revisions to the template and guidance.

4. Business Plan

The updates had been circulated prior to the meeting. Additional points were raised as follows:

Child protection mediation

Claire Webb was to provide case summaries for the Nuffield review but, due to the coronavirus pandemic, it had not been appropriate to carry out remote mediations. It remained to be seen whether the Nuffield event would take place.

Covert recordings

There were concerns that some parents were recording online meetings with local authorities without the latter's knowledge. Relevant members would look into the issue in their own areas.

Communications and dissemination of FJC work

Work on developing a Twitter account had been put on hold whilst the communications team dealt with other priorities relating to Covid-19. Annie Bertram indicated that she was willing to manage the account on behalf of the Council.

Domestic Abuse

The Domestic Abuse Bill had been reintroduced into parliament and the second reading would take place on 28 April.

The Council noted the Civil Justice Council's report on *Vulnerable Witnesses and Parties within Civil Proceedings*. The report recommended the introduction for civil cases of a Practice Direction similar to FPR 3AA on vulnerable witnesses. It also made a recommendation to amend the overriding objective to include:

"Dealing with a case justly and at proportionate cost includes, so far as is practicable –

(a) ensuring that the parties are on an equal footing and can fully participate in proceedings

(g) ensuring that witnesses can give their best evidence

The Council agreed that an equivalent revision to r.1.1(2) of the FPR should be considered.

Special guardianships

The final draft would be circulated to the FJC for final approval. The work of the Public Law Working Group was on hold due to the pandemic.

Medical mediation

The last meeting had been postponed due to a number of medical professionals on the working group. It was noted that there had been several medical dispute cases despite the current crisis.

5. Private Law Working Group – Second report

'*The Time for Change. The Need for Change. The Case for Change*' had been circulated to members. The report was the outcome of the recent consultation and provided an update on the work being taken forward. It was noted that the final report would coordinate with that of the MoJ Harm Panel.

The working group would shortly issue guidance on how to manage private law cases in the current crisis, which may also help steer future learning.

6. Family Justice Board

No update had been received from Family Justice Board.

7. Consultations

President's Transparency Review:

The draft response was being finalised and would take account of recent issues including remote hearings and insufficient resources for the anonymisation and publication of judgements. Members

considered at what stage judgements should be anonymised and what their primary purpose was. Annie Bertram mentioned that people tended to look up their social services file rather than the judgement and would be interested to know if any research had been undertaken on the matter.

Jaime Craig had joined a Coram advisory group, conducting a short evaluation following the President's guidance on anonymised judgements, to ascertain if there had been any change. He would let the Council know the outcome. The Chair suggested that the Transparency Project should be made aware of the work.

Civil Procedure Rules Committee - Contempt of Court: Sam Momtaz's draft response was approved. Rosemary Hunter asked that the Civil Justice Council report and recommendations on vulnerable witnesses were acknowledged in the response to question 5.

Family Procedure Rules Committee - Legal Bloggers: Melanie Carew agreed to draft an initial response, with assistance from Jane Probyn and Maud Davis.

Nuffield Family Justice Observatory – Rapid Consultation on Remote Hearings: Members were asked to respond individually to the call for evidence.

8. Medical Experts Working Group

Mr Justice Williams J had indicated that the President's working group on Medical Experts would recommend that a multidisciplinary committee be set up under the umbrella of the Family Justice Council to take on responsibility for implementing its recommendations.

Members agreed that given its multidisciplinary nature and its lead on mini-pupillages, the Council was in a good position to take this forward. Jaime Craig volunteered his assistance. The Secretariat agreed to provide administrative support to the new business strand, depending on the extent of the work. This would be discussed further.

9. JUSTICE working group: Rethinking Adversarialism within Family Justice

An invitation had been received from JUSTICE to engage with its new working group - *Rethinking Adversarialism within Family Justice*. The project was to identify areas where the court user, and the child, would benefit from processes being restructured in a less adversarial way, and to propose, if it thought appropriate, alternative processes. Members agreed that this was a critical piece of work, which it fully endorsed. As a member of JUSTICE, Rosemary Hunter was content to act as a liaison point and Annie Bertram expressed a wish to also be involved. A meeting would be arranged accordingly.

10. Research update

Rosemary Hunter had circulated a paper outlining recent research. She particularly highlighted the evaluation of the Drive Project by the University of Bristol – a pilot that targeted perpetrators of domestic abuse. This involved work with the family and led to some positive outcomes and interesting observations.

It was agreed to add Adrienne Barnett to the list of potential speakers, to talk about her review of reported cases on parental alienation and domestic abuse.

11. Any other business

Malek Wan Daud invited the Council to consider whether to submit evidence to an inquiry by the Women and Equalities Parliamentary Committee into Coronavirus and the unequal impact on people with protected characteristics. It was agreed that as the closing date was imminent, the

Council would not have time to draft a response. Malek would be welcome to submit evidence should he wish to.

*** Next meeting: Monday, 13 July 2020 ***