



## **Family Justice Council**

### **Minutes of the Council Meeting 27 January 2020, Royal Courts of Justice**

#### **Present:**

Lucy Theis, High Court Judge, Acting Chair  
Fatima Ali, Department of Education  
Jenny Beck, Private Law Solicitor  
Melanie Carew, Cafcass  
Rebecca Cobbin, HMCTS  
Jaime Craig, Child Mental Health Specialist  
Judith Crisp, District Judge  
Louise Fleet, Magistrate  
Rosemary Hunter, Academic,  
Maria Kavanagh, Secretary to the Council  
Ify Okoye, Department for Education  
Matthew Pinnell, CAFCASS Cymru  
Malek Wan Daud, Barrister  
Natasha Watson, Public Law Solicitor  
Claire Webb, Family Mediator  
David Williams, High Court Judge

#### **Secretariat:**

Daphna Wilson, Secretariat

#### **Observer:**

Leigh Shelmerdine, Assistant Secretary to the Civil Justice Council

#### **Apologies:**

Sir Andrew McFarlane, Chair  
Neal Barcoe, Ministry of Justice  
Annie Bertram, Parents and Relatives Representative  
Christina Blacklaws, Private Law Solicitor  
Maud Davis, Public Law Solicitor  
Colette Dutton, ADCS  
Alison Kemp, Paediatrician  
Sam Momtaz, Silk  
Jane Probyn, Circuit Judge  
Stuart Smith, Justices' Clerk  
Paula Adshead, Assistant Secretary to the Council

**Announcements:** The Council welcomed Jenny Beck as the new Private Law Solicitor member. Jenny has over 25 years' experience in all areas of family law and is co-founder of Beck Fitzgerald Solicitors.

Fatima Ali was welcomed from the Department for Education and Leigh Shelmerdine, the Assistant Secretary to the Civil Justice Council, attended as an observer.

It was with regret that the Council said goodbye to Christina Blacklaws and Malek Wan Daud whose appointments had come to an end. Members of the Council since 2013 and 2011 respectively, they were thanked for their significant contributions its business including serving on many sub-committees, contributing to consultations, drafting guidance and helping to organise Council events. They were wished well for the future.

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

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

### **Matters arising:**

Recruitment: The Junior Barrister vacancy was being advertised, with a closing date for applications of 4 March. Interviews were scheduled to take place on 7 April.

Cross-examination of experts by vulnerable witnesses: The meeting with MoJ officials to discuss cross-examination provisions in the Domestic Abuse Bill would be re-scheduled shortly. Jaime Craig and Jane Probyn's presentations were now on the Judicial College website and the links would be published on the Council's webpages in due course.

## **3. Domestic abuse**

The draft Domestic Abuse bill had been halted due to the prorogation of parliament but was expected to be reintroduced. It had been included in the Queen's speech but was not yet in parliament.

The MoJ Expert Panel had published a progress update in late October. The final report and recommendations were expected to be sent for Ministerial approval in early March and published in April. Several cross-cutting themes had been identified including the lack of resources; adversarialism; the pro-contact culture of courts and the family courts working in a silo rather than coordinating with other parts of the justice system dealing with domestic abuse.

The Private Law Working Group's second report was expected to be published in February. There would be separate work streams in relation to out-of-court support for separating families, MIAMS and in-court processes. It would also consider the MoJ Expert Panel report.

The consultation on the draft Domestic Abuse Best Practice Guidance had attracted around 40 responses, many highlighting the need for resources. The working group would meet shortly to consider the responses and the guidance would be finalised after the Panel and PLWG had reported. As those reports may foreshadow a process that could take several years to implement, it was essential to have the best practice guidance in place for the system as it currently stands. Further consideration was being given to clarifying that the guidance,

although directed at professionals, could also be used by LiPs provided that it was not used as a charter.

It was noted that the information leaflet for Litigants in Person (LiPs), an appendix to the guidance, had been adopted by HMCTS and would be sent out by every court with the notice of first hearing. The Chair advised that the template should feature both the Family Justice Council and HMCTS logos.

The Judicial College had now held two sessions on domestic abuse in financial proceedings and would be taking this forward as an ongoing topic. An article had featured in the December edition of Family Law, which acknowledged that the initiative originated from the Council.

#### **4. Covert recordings**

The draft guidance was progressing but there were a few outstanding areas.

*Young people's views* – Jaime Craig's meeting with the Family Justice Young People's Board had identified several elements for inclusion in the guidance, based on its own "top tips" on the effects of covert recordings.

*Data protection* – covert recordings did not feature in the data protection guidance. The Information Commissioner's Office (ICO) had indicated that it would not provide a proactive review but a letter would be sent from the Secretary to the Council, on behalf of the President, inviting the ICO's co-operation.

*Local authorities* – a solicitor had been identified to help produce a clear framework for local authorities on how to approach overt recordings.

The guidance would be aimed at both professionals and LiPs. The latter's expectations should be managed from the outset, particularly in relation to the child's welfare, scrutiny and costs of potential transcripts. It was important to align this with other parties' guidance, including that of Cafcass.

It was noted that Jenny Beck would join the Covert Recording working group and also the Domestic Abuse working group.

#### **5. Business Plan**

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

The FHDRA video and training pack had been made essential training for magistrates. The Judicial College had been unable to support further videos for magistrates at this stage due to a lack of resources. However, it was considering the suitability of the District Judge GRH and DRA videos for magistrates training. The DJ videos had been well received in induction training. These would be reviewed to identify any further work and emerging best practice.

Jenny Beck highlighted the need for a better understanding in the courts of trauma issues and PTSD. She would send links to relevant Scottish training for the Council's information.

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

Previous investigations had shown that a pilot scheme for child protection mediation (CPM) would cost around £20,000. It was noted that the Nuffield Family Justice Observatory would be conducting a rapid evidence review using an academic from the University of Winchester.

The report would be presented to professionals on 7 July. The CPM working group had fed in the problems from the judicial and mediation perspective and Claire Webb would provide a few case summaries for the report. Claire would attend the presentation but other volunteers were welcomed. It was hoped that this would help inform those that may be in a better position to fund or take forward the initiative.

Rosemary Hunter raised concerns that such a small number of case studies would not yield reliable results. It was agreed to await the outcome of the meeting on 7 July.

The matter would be re-visited at the Council meeting in April and further members would be identified to attend the presentation.

## **Activity 3: Pensions Advisory Group (PAG)**

The Nuffield Foundation had agreed to fund production of the lay guide of pensions on divorce, as well as the scoping study.

**Activity 4: Covert recordings** – covered earlier.

**Activity 5: Pre-proceedings** - it was agreed to remove this activity as it had been superseded.

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

Daphna Wilson was thanked for the significant improvements to the Council's website, including the introduction of members' biographies and photos.

Work on the Twitter account had slowed due to other priorities in the Judicial Communications Team. The policy document setting out the parameters in which the Twitter account would operate needed finalising. Malek Wan Daud requested that the matter be kept on the agenda for his successor and highlighted the need for other members to assist. He also reminded members to promote the work of the Council, provide communication channels to other organisations and use the FJC logo and website link on all documents.

Jenny Beck informed members that she regularly shared reports and summaries of other meetings, including her Local Family Justice Board, to other groups. It was agreed that all Council members should provide updates of Council business to other groups that they are involved with, including LFJBs. The proposal for the national FJB to cascade information and questions to the LFJBs was discussed later in the meeting.

**Activity 7: Domestic abuse** – covered earlier.

## **Activity 8: Special guardianship**

The Council's interim guidance on Special Guardianship Orders (SGOs) was published last year. Although the final version was expected to be included in the Public Law Working

Group (PLWG) guidance, it would now be published separately. The draft was subject to consultation with the Adoption and Special Guardianship Leadership Board (ASGLB) and a meeting had been arranged for 4 February. It was hoped that the board would agree the draft before the PLWG meeting on 17 February.

The Council approved the draft, subject to any minor changes. It was hoped that the final version would be ready the Council's approval out-of-committee during March or at its next meeting on 27 April.

It was acknowledged that the guidance would represent a significant change of culture in that final SGOs should generally not be made for those children who have not spent a significant amount of time or have not had a good relationship with the SG. The 26 weeks should not be adhered to if that meant a detailed report could not be obtained. Concerns were raised about funding and legal aid regulations, and the need for buy-in from local authorities.

The potential for a case to be removed from the CMS 26 week standard track and be put on a non-standard track was discussed. In-house systems could be adapted to include an SGO track and it was agreed that this should be fed back to the PLWG for inclusion in the guidance.

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

The initial task would be to conduct a questionnaire to ascertain how and when mediation was used. It would target parents groups, clinicians and other interested parties and be in a format that would generate data rather than narrative responses. Its outcome would determine whether the group should draft any guidance. Concerns included how the child's point of view was represented; the reluctance of some trusts to take the matter to court; and late parental awareness. The questionnaire would go out in April.

## **6. Family Justice Board**

The Family Justice Board had not met in January but feedback from its Performance Improvement Sub Group showed support for the idea of closer links and a two-way information flow between the FJC and the LFJB network. However, any written material should be kept short and focused. The idea of FJC members attending LFJB meetings was also welcomed.

## **7. Special Guardianships – covered earlier.**

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

The Council had previously endorsed the template and accompanying guidance subject to the inclusion of a paragraph to consider how social workers should deal with rolled-up hearings. Cafcass could not subsequently agree to the amendment. It was concerned that it implied that it was reasonable to ask for an either/or report and could be seen to advocate rolled-up hearings, thereby diluting the importance of PD12J. Rosemary Hunter noted that the matter had been debated by the Domestic Abuse Working Group and would be covered in the Best Practice guidance on Domestic Abuse. It was agreed that the paragraph should be removed and that the guidance be published with a footnote to indicate that the matter was under active consideration. The Council would consider endorsing the documentation later in the year.

At the last meeting it had been suggested that S37 would also benefit from a similar template and would be sent to relevant members for consideration. However this was still being considered and was not yet ready for circulation.

## **9. Law Commission: Weddings law reform**

Sam Momtaz had met the Law Commission to discuss its project to modernise weddings law. Its consultation would begin in April. At the Executive Committee meeting it had been suggested that the Council would have an interest in capacity issues and protection for vulnerable spouses but should wait until the consultation was out before deciding whether to respond. The proposal was agreed.

## **10. RCPCH consultation on Child Protection Service Delivery Standards**

The Royal College of Paediatrics and Child Health had invited the Council to respond to its consultation on Child Protection Service Delivery Standards. Alison Kemp and Jaime Craig agreed to draft a response and it was hoped that Colette Dutton would also contribute. The deadline for responses was 17 February.

## **11. Conference planning**

A list of those organisations invited to the conference had been circulated for members' consideration. It was agreed that the following should also be invited: ADSS and the Welsh Government, local judiciary, practitioners and groups, other adoption groups, Women's Aid, Regional Adoption Agencies, Family Rights Group and the Chair of the magistrates family panel in Bristol

Members were encouraged to attend the conference and to help facilitate the break out groups.

## **12. AdviceNow projects**

It was suggested that the £2500 that had been allocated to the pensions lay guide should now fund an alternative AdviceNow project. A few proposals were put to the Council for its consideration and it was agreed to fund the two projects prioritised by Advicenow – How to Get legal aid for a Family Problem and International Divorce. It was suggested that future lay guides might include covert recordings and the domestic violence gateway for legal aid.

## **13. Research update**

Rosemary Hunter's paper gave an overview of recently published research. Where a link was not present, it usually meant that the article had appeared in a subscription journal. If members were unable to access these, she would be happy to download copies for circulation.

It had been agreed at the last Executive Committee meeting to invite the following authors to speak at future meetings:

- Karen Broadhurst et al's research on fathers in recurrent care proceedings
- Tina Haux and Renee Luthra on shared care

Of particular note was the US Misperceptions and Misapplications of Research in Family Law Cases. This looked at child custody in America, exploring the misapplication of research in child custody cases, particularly in relation to parental alienation and high conflict. Jaime Craig was currently working on parental alienation issues and expressed an interest in seeing more of this research.

It was noted that the research by Mary Ryan and Lisa Harker, 'Born into care – lessons from caselaw' was looking to extend its remit beyond 2016 and they were currently taking feedback from local authorities as to what else should be considered.

#### **14. Any other business**

The Civil Justice Council would shortly publish its report and recommendations, following a consultation on vulnerable witnesses (the FJC had submitted a response). It was noted that this and other CJC work would cut across family issues and that efforts to collaborate and avoid duplicating work should be welcomed. It was agreed that the secretariats attend each other's meetings. It was noted that Leigh Shelmerdine and Paula Adshead had recently set up regular meetings with the secretariat of the Administrative Justice Council.

**\* Next meeting: Monday, 27 April 2020 \***