



## Family Justice Council

### Minutes of the Open Meeting held on 19 October 2020 (by MS Teams)

#### **Present:**

Sir Andrew McFarlane, Chair of the Family Justice Council  
Acting Deputy Chair: David Williams, High Court Judge  
Fatima Ali, Department of Education  
Mavis Amonoo-Acquah, Junior Barrister  
Neal Barcoe, Ministry of Justice  
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  
Louise Fleet, Magistrate  
Rosemary Hunter, Academic,  
Maria Kavanagh, Secretary to the Council  
Bernadette MacQueen, Legal Adviser  
Sam Momtaz, Silk  
Matthew Pinnell, CAFCASS Cymru  
Jane Probyn, Circuit Judge  
Fiona Straw, Paediatrician  
Natasha Watson, Public Law Solicitor  
Claire Webb, Family Mediator

#### **Secretariat:**

Paula Adshead  
Daphna Wilson

#### **1. Welcome**

The President of the Family Division and Chair of the Family Justice Council welcomed guests to the Open Meeting.

#### **2. Apologies and announcements**

Bernadette MacQueen and Dr Fiona Straw were welcomed as the new Legal Adviser member and Paediatrician member respectively.

### 3. Minutes of last meeting and matters arising

The minutes had been approved out of committee.

#### Matters arising:

Law Commission consultation on weddings law: Sam Momtaz and Rosemary Hunter would draft a response on behalf of the Council. Members were asked to contact them if they wish to contribute their views.

JUSTICE working group on Improving Access to Justice for Separating Families: A scoping meeting had been held with JUSTICE, at which the Council agreed to act as a liaison resource. The group hoped to be set up by the end of the year. Its focus would be on access to justice and its work was expected to dovetail with, rather than duplicate, that of the Council and other initiatives in the family justice system.

### 4. Business Plan

Lead members provided an overview of their activities:

**Judgecraft:** The Council was working with Judicial College to produce e-learning packages for the judiciary on judgecraft in relation to litigants in person. These videos dramatise different hearings and incorporated issues for individual and group study.

**Child Protection Mediation:** The Nuffield Foundation's Evidence Review of Child Protection Mediation was due to be published in November ([https://www.nuffieldfjo.org.uk/app/nuffield/files-module/local/documents/child\\_protection\\_mediation\\_summary.pdf](https://www.nuffieldfjo.org.uk/app/nuffield/files-module/local/documents/child_protection_mediation_summary.pdf)). A meeting would take place with Nuffield in due course to consider next steps.

**Pensions Advisory Group:** The revised target date for publication of the lay guide was January 2021. Rosemary Hunter was currently reviewing the latest draft, following comments from PAG members on an earlier draft and feedback from a sample of end-users. (Now published: <https://www.advicenow.org.uk/guides/survival-guide-pensions-divorce/>)

**Communications and dissemination of FJC business:** The Council had not yet been granted authorisation for its own Twitter account but would continue to use that of the Judicial Office in the interim.

**Covert recordings:** Guidance was being drafted on how courts manage covert recordings in court proceedings. It was noted that remote hearings would now added a further dimension to this work. Annie Bertram raised the issue of parents' understanding of covert recordings and how this would be reflected in the guidance. She and Natasha Watson would discuss the matter further out of committee.

**Domestic Abuse:** Work had paused on the draft Best Practice Guidance due to the pandemic. Instead the focus was on producing a short guide on best practice for remote and hybrid hearings in domestic abuse cases. This had been approved for publication. (Now published:

<https://www.judiciary.uk/announcements/safety-from-domestic-abuse-and-special-measures-in-remote-and-hybrid-hearings-report-published/>)

The Working Group's evidence to the Public Bill Committee on the Domestic Abuse Bill had been submitted to relevant Ministers. It was noted that the Bill had not yet returned to the House of Lords for its second reading.

**Medical Mediation:** Work had been put on hold due to its members' medical work. Once reconvened, its immediate priority would be to create a questionnaire to assess the current use of mediation in medical cases.

**Medical Experts:** The report of the President's Experts working group was expected to be published by the end of October (now published: <https://www.judiciary.uk/wp-content/uploads/2020/11/Working-Group-on-Medical-Experts-Final-Report-v.7.pdf>). The Council's new working group, which will take forward the report's recommendations, had held its first meeting. It looked at how best to publicise the report, discussed plans to host a formal launch event in early 2021 and considered the membership of the eight regional committees it hoped to set up in the coming months.

## 5. Family Justice Board

The next meeting would focus on the recovery and reform programme of the Implementation Group. The Board would be asked to agree the Group's approach for public and private law, which would hopefully lead to the publication in November of the substantive reports of the Public Law and the Private Law working groups. The Board would also consider the delivery of the Harm Panel recommendations.

It was noted that private law proceedings had seen an increase of 19 % since March, with a similar figure in public law (although the disposal rate had increased and the backlog had plateaued a little). Domestic abuse cases and non-molestation orders had risen significantly.

## 6. Terms of Reference

The Council approved the Executive Committee's revised terms of reference which reflected a more forward-looking approach - horizon-scanning for developments in the family justice system, identifying issues for the Council's attention and making recommendations for future work strands.

The Executive Committee would also consider the full Council's terms of reference in due course. Members were asked to consider whether the ToR was still appropriate and provide their views by email to the Secretariat. Any amendments should be put to the Family Justice Board.

## 7. Family Procedure Rules

Rosemary Hunter put forward a proposal that the overriding objective set out in the Family Procedure Rules 1.1(2) be amended, in relation to vulnerable witnesses and parties. The proposed amendment would make clear the importance of ensuring that all parties are enabled to participate as fully as possible in proceedings and to give their best evidence. It would be

helpful if the change could be consistent across the FPR, Upper Tribunals and the Civil Procedure Rules.

It was agreed that the proposal be submitted to the Family Procedure Rules Committee.

## **8. Consequences of exiting the EU**

Links to recent guidance for legal professionals on family law cases involving the EU had been circulated to members for information. It was agreed that there were no actions for the Council to take forward.

## **9. Research update**

Rosemary Hunter provided an overview of recently published research. It was noted that the Family Justice Observatory had conducted research on *Contact following placement in care, adoption or special guardianships: Implications for children and young people's well-being*.

It would be useful to know the impact of the best practice guidance on Special Guardianship Orders, published by the Public Law Working Group. The Council would monitor this over the next few years, but suggested that this might be an area of research for the Family Justice Observatory.

The Council considered inviting the following to speak at future meetings:

Rob George: *"Our normal is different": Autistic adults' experiences of the family courts.*

Linda Cusworth (or Liz Trinder/Karen Broadurst): *Uncovering private family law: Who's coming to court in Wales?*

The list of speakers would be considered further at the next Executive Committee meeting.

## **10. FJC events**

**Forum:** This would take place online on 14 December 2020 and would explore the report and recommendations of the Harm Panel. Confirmed panel members included Mr Justice Cobb, Lorraine Cavanagh QC, Eleri Butler, Rosemary Hunter and Neal Barcoe. The panel would deliver short presentations, to be followed by a Q&A session featuring selected pre-submitted questions and closing with live questions from the audience. The Planning Committee would meet on 22 October to take this forward.

**Conference:** The event was unable to go ahead in person on 22 January but would instead be held as one-hour online sessions over the course of a week in February. These would culminate in the Bridget Lindley Memorial Lecture to be given by Lady Hale.

Delegates would be invited to register for individual sessions. Careful consideration should be given timings and content. It was suggested that the presentations on international approaches might not be appropriate for a stand alone session. The sessions should be recorded and published on the FJC website as a resource for a wider audience.

**Other:** It was suggested that the Council hosts regular sessions every two or three months on other topical issues. Further consideration would be given to this at the next Executive Committee meeting.

### **11. Any other business**

There was no further business.

### **12. Questions from guests**

The guests were invited to put their pre-submitted questions to the Council. The full set of questions and responses will be published on the FJC website as an annex to these minutes.

The meeting ended with the Family Justice Observatory outlining its forthcoming workstrands:

- Report on remote hearings to be published by the end of October and focused events on public law, for parents and litigants in person.
- Child protection conferences and how the pandemic has impacted these.
- Data analysis in private law (Cafcass England) following the Wales study.
- A deeper dive into the vulnerabilities of parents and what affects them making applications.
- Child protection mediation research to be published in November.

Attendees were encouraged to sign up to the FJO for updates and to email any suggestions for future research.



## Open Meeting Q&A

### Question 1:

**Where there are difficulties in finding suitable placements for children in care, particularly where the child has complex needs/high risk behaviour patterns, is the court's role in making decisions in the best interests of children impeded and does the Family Justice Council have a role in this area/on this issue?**

**Answer by Sam Momtaz (drafted by Maud Davis):** The difficulties created, when a suitable placement is not available, are made clear in the series of six judgments given by Sir James Munby, the then President of the Family Division, regarding a very disturbed teenager ([In re X \(A Child\) \(Jurisdiction: Secure Accommodation\)](#), [In re Y \(A Child\) \(Jurisdiction: Secure Accommodation\) \[2016\] EWHC 2271 \(Fam\)](#), [2017] Fam 80, [2017] 2 FLR 1717, [Re X \(A Child\) \(No 2\) \[2017\] EWHC 1585 \(Fam\)](#), [2018] 1 FLR 1041, [Re X \(A Child\) \(No 3\) \[2017\] EWHC 2036 \(Fam\)](#), [2018] 1 FLR 1054, [Re X \(A Child\) \(No 4\) \[2017\] EWHC 2084 \(Fam\)](#), [2018] 1 FLR 1072, [Re X \(A Child\) \(No 5\) \[2017\] EWHC 2141 \(Fam\)](#) and [X \(A Child\) \(No 6\) \[2018\] EWHC 1005 \(Fam\)](#)). The case began because suitable accommodation was only available in Scotland, and the need to address the legal complications that resulted from that (this led to the Children Act 1989 s25 being amended to allow secure accommodation to be provided in England or Scotland).

As will be apparent from the need to keep going back to court, and the publicity the case attracted, X's situation was dire. [X \(A Child\) \(No 3\) \[2017\] EWHC 2036 \(Fam\)](#), in particular, received widespread media attention, with the focus on the lack of resources:

*37. What this case demonstrates, as if further demonstration is still required of what is a well-known scandal, is the disgraceful and utterly shaming lack of proper provision in this country of the clinical, residential and other support services so desperately needed by the increasing numbers of children and young people afflicted with the same kind of difficulties as X is burdened with. We are, even in these times of austerity, one of the richest countries in the world. Our children and young people are our future. X is part of our future. It is a disgrace to any country with pretensions to civilisation, compassion and, dare one say it, basic human decency, that a judge in 2017 should be faced with the problems thrown up by this case and should have to express himself in such terms.*

*38. X is, amongst all her woes, a young person convicted in the Youth Court and a prisoner of the State. As long ago as 1910, a Home Secretary, speaking in the House of Commons, asserted that "The mood and temper of the public in regard to the treatment of crime and criminals is one of the most unflinching tests of the*

*civilisation of any country." In modern times the principle has expanded, so that, as is often said, "One of the measures of a civilised society is how well it looks after the most vulnerable members of its society." If this is the best we can do for X, and others in similar crisis, what right do we, what right do the system, our society and indeed the State itself, have to call ourselves civilised? The honest answer to this question should make us all feel ashamed. For my own part, acutely conscious of my powerlessness – of my inability to do more for X – I feel shame and embarrassment; shame, as a human being, as a citizen and as an agent of the State, embarrassment as President of the Family Division, and, as such, Head of Family Justice, that I can do no more for X.*

*39. If, when in eleven days' time she is released from ZX, we, the system, society, the State, are unable to provide X with the supportive and safe placement she so desperately needs, and if, in consequence, she is enabled to make another attempt on her life, then I can only say, with bleak emphasis: we will have blood on our hands.*

*40. My judicial duty, as with every judge in this country, is "to do right to all manner of people after the laws and usages of this realm." There are occasions, and this is one, where doing "right" includes speaking truth to power. The entrance to the Old Bailey, the Central Criminal Court, admonishes those who enter to "Defend the Children of the Poor." Is less required of the Family Court or of the Family Division of the High Court? I think not.*

*41. I direct that copies of this judgment be sent immediately to the Chief Executive Officer of NHS England, to the Secretary of State for the Home Department, to the Secretary of State for Health, to the Secretary of State for Education and to the Secretary of State for Justice.*

Tellingly, counsel for the local authority had reported to Sir James, at the end of the proceedings, as follows:

*'Given the situation the Court faced last year, ... it is fair to say that her progress having accessed the treatment she so desperately needed, has been nothing short of phenomenal.'* (quoted in *X (A Child) (No 6)* [2018] EWHC 1005 (Fam) ).

This was an acute case, but it indicates the broader difficulties faced by the Family Court in ensuring that the welfare needs of the most vulnerable children and young people in society are met. It also illustrates what can be achieved when those needs are properly met.

The availability of secure accommodation was a feature in *Re B (Secure Accommodation Order)* [2019] EWCA Civ 2025, including the ratio of secure 'welfare beds', compared to secure 'youth justice beds' (with the Association of Lawyers for Children, as intervener, citing the Children's Commissioner on this – see below). Lord Justice Baker referred to the on-going difficulties as follows:

*6. This significant shortfall in the availability of approved secure accommodation is causing very considerable problems for local authorities and courts across the country. It has been the subject of expressions of judicial concern in a number of cases by judges dealing with these cases on a regular basis, notably by Holman J in [A Local Authority v AT and FE](#) [2017] EWHC 2458 (at paragraph 6):*

*"I am increasingly concerned that the device of resort to the inherent jurisdiction of the High Court is operating to by-pass the important safeguard under the regulations of approval by the Secretary of State of establishments used as secure accommodation. There is a grave risk that the safeguard of approval by the Secretary of State is being denied to some of the most damaged and vulnerable children."*

*The absence of sufficient resources in such cases means that local authorities are frequently prevented from complying with their statutory obligations to meet the welfare needs of a cohort of vulnerable young people who are at the greatest risk of harm. The provision of such resources is, of course, expensive but the long-term costs of failing to make provision are invariably much greater. This is a problem which needs urgent attention by those responsible for the provision of resources in this area.*

The Children's Commissioner's May 2019 report, '*Who Are They? Where Are They?*' (<https://www.childrenscommissioner.gov.uk/report/who-are-they-where-are-they/>) underlines the preponderance of secure 'youth justice' beds, over secure 'welfare' beds. If the youth justice system is better able than the family justice system to ensure there are specialist secure placements for young people at risk, that calls into question the justification for that, given the situations X and B faced, and that other children and young people continue to face.

Given the shortages of specialist placements (secure and open), local authorities have been using unregulated accommodation and specifically semi-independent (or supported) accommodation for young people aged 16 years and over, sometimes with High Court declarations depriving them of their liberty (see <https://www.gov.uk/government/statistics/children-looked-after-in-england-including-adoption-2018-to-2019#history>). There has been concern that this bypasses the requirements of s25, and the safeguards under which secure accommodation is provided. This was considered in 2017, and it was decided that, when considering an application under the inherent jurisdiction that would otherwise have been made under s25, the High Court should have the requirements of the statutory scheme clearly in mind, and the child should be joined as a party and represented by a children's guardian (*Re A Child (No Approved Secure Accommodation Available: Deprivation of Liberty)* [2017] EWHC 2458 (Fam)).

The Local Government Association, in its [briefing for the House of Commons debate](#) on 15 October 2019, regarding unregulated accommodation for 16 to 17 year olds, said:

- *We are concerned by recent reports around some unregulated provision, in particular increasing issues about the vulnerability of young people in unregulated accommodation to organised crime, including county lines. Where a child is considered particularly vulnerable, support plans should balance any risks posed to the young person with the need to ensure they are able to live a 'normal' life. This is especially true of older children.*
- *Year-on-year increases in the number of children entering the care system means services are under significant and increasing pressure. While unregulated settings are the right accommodation for some young people, rising use is partly driven by shortfalls in places in registered children's homes, often for young people with more complex needs.*



- *Financial pressures on children services are limiting council's efforts to develop and maintain the right provision locally. It can mean they are forced to place children out of area or in placements that are not best suited to their needs.*  
(<https://www.local.gov.uk/parliament/briefings-and-responses/sixteen-17-year-olds-unregulated-accommodation-house-commons-15> )

The current President of the Family Division, Sir Andrew McFarlane, has published 'Practice Guidance: Placements in unregistered children's homes in England or unregistered care home services in Wales', on 12 November 2019 (<https://www.judiciary.uk/wp-content/uploads/2019/11/PG-Placements-in-unregistered-childrens-homes-in-Eng-or-unregistered-care-home-services-in-Wales-NOV-2019.pdf> ). This makes it clear that, at the very least, the court has to be told if a service is not registered (so not subject to inspection by Ofsted (England) or the Care Inspectorate Wales), with the aim of ensuring that '*... steps are immediately taken by those operating the unit to apply for registration (if the unit requires registration) so that the placement will become regulated within the statutory scheme as soon as possible.*'

This issue clearly needs to be kept under close scrutiny, and the President's practice guidance strictly adhered to, but the fundamental difficulty is lack of resources. Department for Education research has made the point that local authorities are reliant on the market to provide placements (secure or open) for children with the most complex needs and whose behaviour is putting them or others at risk (Di Hart and Ivana La Valle, Local Authority Use of Secure Placements, December 2016 - [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/582375/Local-authority-use-of-secure-placements.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/582375/Local-authority-use-of-secure-placements.pdf) ). That, in turn, means this is a question of political policy, and the choices made by the government of the day, and local government, about spending priorities.

## **Question 2:**

***Research shows that parents with learning disabilities are over-represented in care proceedings and that their children are more likely to be removed than to receive support to stay at home with their families.***

***What training is available for family court judges to ensure a) they know about the range of assessments that are appropriate for parents with learning disabilities (not just PAMS) and b) that they are able to distinguish between the amount of support proposed and the way in which that support will be provided, so that they can give proper scrutiny to any claim that support provided will simply equate to substituted parenting and so the child(ren) should be removed?***

**Answer by Mavis Amoono-Acquah (drafted by Judith Crisp):** It is an excellent question to ask in relation to parents with learning disabilities and the training required to understand the support which may be available. The induction course which is a pre-requisite for any Judge undertaking public law work has a lecture and slot specifically addressing issues relating to parents with learning disabilities and how they may best be supported. The Judicial college welcomes speakers on update courses which are held each year for any Judges holding such authorisation. It is certainly a matter which I believe could be forwarded to the Course directors

for consideration on forthcoming courses. Currently however there is no agreement as to whether update courses will be held as due to Covid 19 most courses are being held remotely and priority is currently given to induction courses.

### **Question 3:**

***Can the Family Justice Council see a time when mediation can offer a triage system for families with possibly some compulsory mediation sessions for legal aid cases to try and reduce the numbers applying to court without attempting mediation.***

**Answer by Claire Webb:** The introduction of the Mediation Information Assessment Meeting (MIAM) was to try and ensure that the applicant considered mediation in private law family cases and financial remedy cases prior to issuing an application with the court. The purpose of this was to enable those matters better suited to mediation to be signposted at an early stage to avoid or help to reduce backlogs in occurring in the family law system. This requirement to attend a MIAM is under continual review, as is the consideration of making the MIAM compulsory to both parties and whether funding should be available for the parties. The purpose of the MIAM is to where possible encourage people to take ownership of their issues and avoid the need to issue an application to the court where there are no safeguarding concerns.

MIAMS can be carried out remotely, most mediators are now working via Zoom and other platforms to enable the MIAM and mediation itself to take place.

The issue of triage or other uses of mediation at early stages are under review by the relevant authorities and where discussions between all partners continue to ensure the best use of resources occur, the Family Mediation Council which governs mediators are involved.

The Family Justice Council is aware of the importance of mediation and ADR generally but cannot answer specific points as to mediation. More information in relation to mediation can be found at <https://www.familymediationcouncil.org.uk>.

The Family Justice Council recognises the benefits of mediation and has been liaising with the Nuffield Family Justice Observatory in relation to Child Protection Mediation, the Nuffield have carried out a Rapid Evidence Review of this area and the report is due to be published later this year. The Family Justice Council will continue to work with them in this regard if it is felt the Family Justice Council can add value.

### **Question 4:**

***Do you believe that lockdown due to Covid-19 will have increased or decreased family law claims?***

**Answer by Melanie Carew:** Cafcass publishes data on the number of applications made to the family court in private and public law on a monthly basis and this is available on the Cafcass website.

The figures reflect that while there was an initial, and significant, dip in the number of applications at the start of the lockdown (w/c 23 March 2020) they have recovered to a level consistent with the previous trajectory. As it stands the latest financial quarter (Jul-Sep 2020) is likely to be the busiest ever.

The reasons for the dip have not been explored but it is likely that the practical implications of the lockdown may have had an impact, including the availability of staff across the family justice system to service demand. What is known however is that the throughput of cases has slowed to the extent that the number of open cases is significantly higher than ever.

- The figures below show a comparison with the same period in previous years  
In July 2020 Cafcass received 6,340 new cases which is the highest ever monthly total for new demand.

### Private law cases received between April – August

	<b>2018-19</b>	<b>2019-20</b>	<b>2020-21</b>
	<b>Cases</b>	<b>Cases</b>	<b>Cases</b>
<b>Apr</b>	3,462	3,609	2,570
<b>May</b>	3,636	3,853	3,361
<b>Jun</b>	3,390	3,617	3,808
<b>Jul</b>	3,681	4,269	4,587
<b>Aug</b>	3,944	3,734	3,758

### Public law cases received between April – August

	<b>2018-19</b>	<b>2019-20</b>	<b>2020-21</b>
	<b>Cases</b>	<b>Cases</b>	<b>Cases</b>
April	1,460	1,506	1,358
May	1,735	1,618	1,432

June	1,485	1,454	1,565
July	1,590	1,740	1,721
Aug	1,615	1,499	1,459

### **Question 5:**

***If “remote hearings” are used more frequently in family hearings, what steps need to be taken in order to ensure access to justice is not adversely affected?***

**Answer by Rosemary Hunter:** There is no doubt that remote hearings raise new issues of access to justice. One area where this arises is in ensuring that arrangements for remote hearings protect the safety and well-being of victims of domestic abuse and enable them to participate fully in proceedings. The Family Justice Council’s Domestic Abuse Working Group has recently completed a short piece of guidance on ‘Safety from Domestic Abuse and Special Measures in Remote and Hybrid Hearings’. The guidance has now been approved by the President of the Family Division for his approval and will be published widely.

More generally, remote hearings need to be inclusive of litigants in person as well as legal professionals. Unfortunately, there has been little research so far on the experiences of litigants in person in remote hearings. The Nuffield Family Justice Observatory’s rapid consultation conducted in April captured the views of a large number of professional participants in the family justice system but only a tiny number of litigants in person. The second wave of research now being conducted by the Observatory will include specific consultation with parents with experience of public law proceedings, but not the much larger group of litigants in person in private law proceedings. This indicates an access to justice issue in itself. If the experience of litigants in person is not taken into account in considering how remote hearings are working, then any adjustments made to the system will not respond to their particular concerns and needs. The first step in order to ensure access to justice is not adversely affected, therefore, is to actively investigate the experiences of litigants in person in remote hearings.

We can gain some insight from other studies such as the Civil Justice Council’s rapid review of the impact of Covid-19 measures on the civil justice system, JUSTICE’s report on *Preventing Digital Exclusion from Online Justice*, and research on litigants in person more generally. These all suggest that lay parties and litigants in person are disproportionately affected by:

- Lack of information and support available from court staff prior to and on the day of hearings
- Lack of communication prior to hearings
- Lack of access to technology needed to participate effectively in remote hearings
- Lack of connectivity and digital skills
- Not having a quiet or private space at home from which to participate in a hearing
- Not knowing what to expect in a remote hearing, not knowing or being instructed in how to participate, not being given a meaningful opportunity to contribute to the hearing
- Not having orders explained at the end of a hearing
- Difficulties in arranging for McKenzie Friends or support workers to accompany and assist them in remote hearings

- Less access to other sources of advice prior to and after hearings.

These issues suggest further steps that need to be taken, including great communication, information and explanations before and during the hearing, making particular efforts to ensure litigants in person are able and are given the opportunity to participate, and advising of protocols for the inclusion of McKenzie Friends and support workers.

The FJC has a Working Group on Judgecraft in relation to litigants in person which has thus far focused on judgecraft in face to face hearings. However, it is now considering the possibility of producing materials on judgecraft in relation to litigants in person attending remote and hybrid hearings.

### **Question 6:**

***Please could the Family Justice Council inform us what has happened with the draft guidance from the FJC working group on domestic abuse cases and whether and how this may assist the government's implementation plan of the Ministry of Justice 'Assessing Risk of Harm to Children and Parents in Private Law Children Cases' report.***

**Answer by Mr Justice Williams:** During the Spring of 2020 the Working Group was in the process of finalising the Best Practice Guidance. It is a lengthy and comprehensive document. For a combination of reasons, the group felt that it should pause work on the draft Best Practice Guidance given the current situation in the courts; it would be neither timely nor helpful to promulgate a large document premised on 'business as usual' at this point. We also considered that the Guidance would need to be revised to take into account the Harm Panel's report and implementation of its recommendations, including amendments to the Domestic Abuse Bill. Thus the BPG remains on pause at the current time. However, the working group did draft Guidance on Domestic Abuse in Remote Hearings. The Working Group agreed to focus on producing quick and short guidance on best practices for remote and hybrid hearings in domestic abuse cases, working from the group's response to the FJO report. The guidance has now been finalised and approved by the President.

In the early part of the year the DA Working Group also:

- Submitted feedback relating to issues that have arisen with regard to the move to remote hearings in domestic abuse cases.
- Considered the position with regard to a possible amendment to the overriding objective in the Family Procedure Rules FPR r1.1(2), in relation to vulnerable witnesses and parties. The proposed amendment would make clear the importance of ensuring that all parties are enabled to participate as fully as possible in proceedings and to give their best evidence. This was discussed earlier in the meeting.
- The Working Group agreed written evidence to the Public Bill Committee on the Domestic Abuse Bill, submitting, as previously, that the proposed provisions on direct cross-examination should be widened and simplified in the interests of both judges and parties. Unfortunately, the evidence was submitted too late to be considered by the Committee but was later submitted to the relevant Ministers.
- The Working Group will also take forward as far as possible the wider issues raised in submissions to the consultation on the draft Best Practice Guidance.

### **Question 7:**

***In light of the recent pandemic and ever-increasing demands on the Family Court, do the Council have any strategic plans to assist in reducing the backlog of cases currently in the system.***

**Answer by Paula Adshead:** We are unable to directly answer this question as the Council does not play a role in planning or implementing strategies. Responsibility for strategic and governance matters lies with the Family Justice Board, of which the Council is a sub-group. The primary role of the Family Justice Council is to promote an inter-disciplinary approach to family justice and to monitor the system. It operates independently of the FJB but acts as a critical friend. It provides expert advice, from an inter-disciplinary perspective, to the FJB on key family justice system issues. Additionally, the Council produces guidance for the judiciary and other professionals working in the family justice system, hosts conferences and other events on topical issues, responds to consultations and conducts its own consultations and reviews.

The FJB, on the other hand, is the primary forum for setting direction for the family justice system and overseeing performance. Like the FJC, it aims to take a cross-system approach to family justice and is jointly chaired by Ministers from the Ministry of Justice and Department for Education.

The Family Justice Reform Implementation Group, an advisory sub-group of the FJB, is finalising recommendations to the Board for a national programme responding to pressures within the justice system. The Implementation Group is considering immediate recovery priorities, and the opportunities presented by longer term reform. The FJB will receive the Implementation Group's recommendations at its next meeting in November.

### **Question 8:**

***Why isn't Family Justice, monitoring and recording suicides of parents currently in proceedings?***

**Answer by Annie Bertram:** Whilst there is no specific piece of work around the recording of suicides of parents during proceedings, the Family Justice Council is very mindful of the impact on families at these difficult times. Part of my role as the Parent and Relatives Representative is to ensure that all members consider this routinely and as part of any current and future work the Council undertakes. Having been through two sets of public law proceedings and four sets of private law proceedings in respect of my own children, and having endured the suicides of my son and ex-partner, this is an issue very close to my heart and I take personal responsibility for ensuring the voices of families are heard. My experience of the Family Justice Council is that all members are fully aware of and committed to minimising the harmful impact of family law proceedings on all parties.

End