



Family Justice Council

Minutes of the Council Meeting held on 13 July 2020 (by MS Teams)

Present:

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,
Matthew Pinnell, CAF/CASS Cymru
Jane Probyn, Circuit Judge
Claire Webb, Family Mediator

Secretariat:

Paula Adshead
Daphna Wilson

Apologies:

Sir Andrew McFarlane, Chair
Lucy Theis, High Court Judge, Deputy Chair
Colette Dutton, ADCS
Maria Kavanagh, Secretary to the Council
Sam Momtaz, Silk
Ify Okoye, Department for Education
Natasha Watson, Public Law Solicitor

1. Announcements

Mavis Amonoo-Acquah was welcomed as the new Junior Barrister member, succeeding Malek Wan Daud. Mavis, a family law barrister at Harcourt Chambers, has developed a specialised practice across private children law, matrimonial finance and public children law. She also has experience of international family law issues and a keen interest in surrogacy and fertility law, and modern families.

2. Covid-19 – the work of the Recovery Group

Lord Justice Baker gave a presentation on the work of the Recovery Group. He highlighted the following points:

- The judicial Recovery group comprises representative judges from each tier and is separate from the multiagency recovery group led by Jackie Tiotto, Cafcass.
- A survey of Designated Family Judges had contributed to the President's Road Ahead framework. The guidance had to be non-prescriptive given the diversity of the family justice system.
- There had been a steady increase and significant backlog in both private and public law cases over the last four months, adding to what was already a high number of cases.
- The family justice system was able to continue functioning, whilst criminal jury trials had stopped and the number of civil applications dropped. However, there had been problems with IT, staffing levels and social distancing in courts.

Going forward:

- The aim was to have fully attended court hearings as soon as possible.
- Restrictions, such as number of sitting days, had been lifted for fee paid judges to allow for their use in 20% of cases.
- Court building space was limited.
- The Recovery Group had put forward proposals including robust case management, hybrid hearings and the use of more fee paid judges. Recent pilots on flexible working were expected to be evaluated shortly.
- HMCTS were looking to address demand and reduce the number of cases going to court. Alternative dispute resolution, arbitration and pre-proceedings work were being considered by the Family Justice Board Implementation Group.

How the Council might contribute:

- Find ways to quickly share ideas and best practice across the country – the Children's Panel email group and the proposed FJC guide on domestic abuse cases in remote/hybrid hearings were good examples.
- Consider a long-term review on arbitration, as opposed to mediation, in children work. There had been no independent review as there had been very little arbitration recently. However, the situation was now changing.
- Introduce a public education campaign to raise awareness of alternative dispute resolutions. The removal of legal aid meant that there was no early legal advice to steer people away from court. It was agreed to monitor the work of other bodies looking to keep cases out of court (Implementation Group, DWP and JUSTICE). In the meantime, the Council might consider publishing information on alternatives to court.

Discussion:

- PD36Q, which allows DFJs to deviate from the Child Arrangements Programme, was being looked at by HMCTS and others.
- Judges needed more direction on time-efficient case management. This would be a significant project. Baker LJ would raise the issue with Family Division Liaison Judges.

- Parties should be directly consulted about how remote hearings were affecting them. This might be taken up by a follow-up consultation from the Nuffield Family Observatory.
- Covid had changed the way in which some parents were dealing with child disputes. Some were exploiting it for their own benefit, whilst others were negotiating and burying their differences.

4. Minutes of last meeting and Matters Arising

The minutes had been amended and approved out of committee. The matters arising had been included in the business update, circulated to members before the meeting.

Mavis Amonoo-Acquah accepted an invitation to join the Covert Recordings Working Group.

5. Family Justice Board

The Board's meeting on 21 July would focus on the Harm Panel report and output of the Implementation Group. A summary of FJC business had been submitted, highlighting plans to set up regional Experts sub-committees and proposing closer links with the LFJBs.

The Implementation Group was meeting on a monthly basis, focusing on Covid-19, the Public and Private Law Working Groups, the Harm Panel report, Domestic Abuse courts and private law demands.

There were concerns that neither legal practitioners nor parents and families were represented on the Board's membership. A useful comparison could be made with Local FJBs which mostly benefited from a diverse membership.

6. MoJ Harm Panel report

The evidence received from individual parties was highly consistent both internally and with previous research. The report indicated that there were four structural barriers to addressing domestic abuse and other forms of harm:

- limited resources
- pro contact culture
- adversarial process
- the family court working in silo; not coordinating with other parts of the justice system or the domestic abuse infrastructure.

These obstacles affect the ability of victims to raise the issue of abuse and for children to be heard; the implementation of PD12J; fact-finding; the court experience for victims; lack of protection and continuation of abuse through contact orders. Many respondents said they were worse off going to court as they had less control and less ability to protect their children.

The Panel's recommendations included:

- Design principles and statement of practice for private law proceedings.
- Addressing the effects of presumption of parental involvement.
- Reform of the Child Arrangements Programme into a more investigative process and keeping checks on orders.
- Special measures and cross-examination.
- Coordination and consistency with other courts and a wider system.

- Review of perpetrator programmes.
- Coordinated training to support the new system.

The Panel also proposed further research and better data collection to verify any change.

The Government had published an implementation plan alongside the report and the Family Justice Board would consider in further detail how to take forward the work.

Regarding the Domestic Abuse Bill, this had had its third reading in the House of Commons and would pass to the Lords. It had been amended to include provisions for automatic eligibility for special measures.

Jenny Beck highlighted the difficulties faced by domestic abuse victims, particularly during the Covid situation, in representing themselves and accessing court. The HMCTS initiative to identify key words in applications had been welcomed. However, there was still a need for non-means tested legal aid. The Government had provided a grant to FLOWS, but it was felt that this did not address the issue as victims could not get representation this way.

7. Business Plan

Updates on Business Plan activities had been circulated as a paper.

Rosemary Hunter provided an update on the possible amendment to FPR r1.1(2). The Family Procedure Rules Committee would liaise with its civil counterpart and await any changes to the CPR. However, it was felt that this did not address the substance of the proposal, which was for the amendment to be made to the FPR in its own right. The Council should be proactive and advocate the amendment for both vulnerable witnesses and litigants in person generally. It was agreed to consider the issue at the next meeting, for which Rosemary Hunter would write a short paper.

8. Experts Committee

The new FJC committee would take forward the recommendations of the Experts Working Group, pending the Acting President's approval of the report. The committee had considered its terms of reference and identified potential members. It aimed to set up and supervise eight regional committees to enable the necessary communication, training and support to create a strong pool of experts.

9. Terms of reference

The Council considered whether its work continued to reflect the terms of reference compiled by the Family Justice Board in 2012. It was unclear how much scope of the Council had, should it wish to modify the terms. It was agreed to await information from Neal Barcoe on the origins of the ToR and to discuss further at the next meeting.

10. Open Meeting

The Council agreed that the Open Meeting should go ahead on MS Teams. As such, the number of attendees would not be limited but some control should be maintained by an administrator throughout the meeting.

11. Debate

It was agreed to focus on the Harm Panel report. As such, the topic might lend itself better to a forum, with short debates on specific aspects. Speakers could be identified from the Harm Panel membership.

It was likely that this would be a hybrid event with attendees both in person and online. Court 33 would make an ideal venue and it was suggested that a company such as Bounce could be used to facilitate the technology. The exact date had yet to be confirmed but was likely to be in the first half of November.

Members were asked to consider the format, content and speakers for the event and to send their suggestions to Paula Adshead. The final proposals would be agreed by email before the next Council meeting.

12. Twitter

It had been confirmed by the Judicial Office Communications Team that the Council could not have its own Twitter account. Mr Justice Williams would speak to Maria Kavanagh to find out more and report back to the next meeting. The Council would continue to use the Judicial Office account to publicise material.

13. Research update

Recent reports on Covid-19 related issues were very much from a professional view. There was no information directly from non-professional court users regarding their experience of remote hearings. This was a serious gap and such evidence was crucial. The FJO was expected to conduct the relevant research and other proposals were being considered. Members felt that obtaining data via a short questionnaire after telephone hearings might be useful but noted that the difficult and emotional nature of such hearings might affect the responses.

The research conducted by Liza Thompson on the interface between social work and child protection proceedings was consistent with the Harm Panel findings and it was suggested that the local authority members of the Council might wish to consider the issues raised.

It was agreed that the next research presentation would take place at the January meeting.

14. Any other business

Paula Adshead clarified the procedure for the Open Meeting. As the meeting would be held online, it was agreed to increase the number of guests whilst still ensuring a cross section of representatives from the family justice system, including lay parties.

Maud Davis highlighted a government consultation on EU retained law, noting its possible implications for family justice. However, it was understood from the MoJ that the Government was not putting forward a request for any bespoke arrangements, other than joining the Lugano Convention. It would be leaving EU family law instruments and falling back on 1996 Hague instruments without exception. It was agreed that there was no active role for the Council to undertake but it would review the position in October.

***Open Meeting: Monday, 19 October 2020 ***