

**Family Justice Council**

# Minutes of the meeting held on 12 July 2021 (by MS Teams)

**Present:**

Chair: Mrs Justice Theis

Fatima Ali, DfE

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

Rosemary Hunter, Academic

Maria Kavanagh, Secretary to the Council

Bernadette MacQueen, Legal Adviser

Sam Momtaz, Silk

Mr Justice Peel, High Court Judge

HHJ Jane Probyn, Circuit Judge

**Secretariat:**

Paula Adshead

**Apologies:**

Colette Dutton, ADCS

Louise Fleet, Magistrate

Matthew Pinnell, Cafcass Cymru

Fiona Straw, Consultant Paediatrician (unlikely to attend)

Claire Webb, Family Mediator

Daphna Wilson, Secretariat

Leigh Shelmerdine, CJC (Amy Shaw to attend in her place)

**1. Announcements**

* Mr Justice Robert Peel was welcomed to his first full meeting having succeeded Mr Justice Williams as the High Court Judge member. The Council looked forward to benefiting from his expertise, particularly in relation to financial matters.
* HHJ Jane Probyn was attending her last meeting before her end of appointment in September. A valuable member of the Council since 2015, she had made an enormous contribution to its work. The Council was hugely grateful for her commitment and pragmatism. The President added his own thanks and hoped that she would be able to remain connected to the Council in the future.
* Paula Adshead would be leaving her role as Deputy Secretary to the Council in October. The next meeting would be her last and members were encouraged to attend in person to say farewell.

**2. Minutes of last meeting and matters arising**

The minutes of the last meeting were approved.

**Matters Arising:**

*Independent Review of Children’s Social Care:* The Council recognised the importance of providing feedback from the Council on the Review’s initial report: [case-for-change.pdf (independent-review.uk)](https://childrenssocialcare.independent-review.uk/wp-content/uploads/2021/06/case-for-change.pdf). Maud would lead on drafting and further support would be identified if required.

*Law Commission’s 14th Law Reform Programme*: General discussions had taken place with the Commission earlier in the year but the only specific proposal raised in Council meetings was the incorporation of the UNCRC into English law. Neal Barcoe had forwarded the proposal to the Department for Education as the lead government for UNCRC issues. It was agreed that should the DfE not be willing to support the proposal, the Council should write to the Commission requesting that it is given due consideration.

*Bridget Lindley Lecture:* A recording of Baroness Hale’s lecture and subsequent discussion with the President had been published on the website but had to be limited to audio only as the removal of attendees’ videos had caused a series of technical issues. [Adoption in the 21st Century and the Bridget Lindley Memorial Lecture – March 2021 | Courts and Tribunals Judiciary](https://www.judiciary.uk/publications/adoption-in-the-21st-century-and-the-bridget-lindley-memorial-lecture-march-2021/)

*Pensions Advisory Group:*  The Guide to the Treatment of Pensions on Divorce and the Advice Now summary had been mentioned in a recent episode of Money Box - <https://www.bbc.co.uk/sounds/play/m000w3mk> There were also other activities in relation to publicising the guide including an animation on social media and other platforms.

*Parental alienation*: A new working stream had previously been suggested. Although there was a section in the draft Domestic Abuse Best Practice Guidance, it was felt that the matter would merit stand-alone guidance. A highly complex and polarised area, it would need time to evaluate the issues and determine what the guidance should achieve. It would also be beneficial to look at case management and produce short interim guidance to give a clear analysis on what parental alienation is and how to identify it.

Nuffield Family Observatory had held a seminar on international research and lessons drawn in other jurisdictions. Cafcass had carried out work in this area and might be content to share their training material.

**3. Business Plan**

**Judgecraft in relation to litigants in person:** The video links had been circulated to all members. The existing videos continued to be used at the Judicial College but at present it was not in a position to help develop new ones. It was agreed to remove the activity from the Business Plan for the time being but consider liaising with the College on new videos in the future. Jenny Beck welcomed the videos as extremely helpful and wondered if there was a way of explaining more about the DA training the judiciary receives.

**Use of covert recordings in family proceedings**:Jaime Craig was now co-chairing this workstream with Natasha Watson. They had created an action plan and hoped to have a meeting before vacation to assign members to those tasks. The Council agreed that HHJ Mary Lazarus should be co-opted to the working group.

**Domestic Abuse:** The Domestic Abuse Bill had now been enacted although relevant parts relating to family justice had not yet been brought into force – some changes were expected to be implemented in October and more substantive provisions around April 2022.

The Council had received a letter from Rights of Women in which they made several recommendations. It recommended that the Best Practice Guidance be published as soon as possible. The Domestic Abuse Working Group would be able to resume work on the draft guidance over the autumn, with a view to launching the final copy in early 2022. The guidance also covered another recommendation that domestic abuse and sexual violence support workers should be allowed to accompany the party into the court room. Guidance and templates in relation to the use of Scott Schedules had also been tackled in the draft guidance and would be revisited to ensure that appropriate evidence is placed before the court.

The President had received permission from all the parties in the four appeals to Re H N to share their skeleton arguments about the legal approach with the Council. He also suggested that the draft guidance is currently too lengthy and that it could be made more concise, with a narrative sitting alongside to explain the reasoning.

It was agreed that those members on the Family Procedure Rules Committee would monitor its timetable. HHJ Jane Probyn would continue to assist the working group and a meeting would be held in due course.

**Medical mediation:** The core members had agreed that this workstream would be better dealt with at a later date and therefore agreed to consider the position in early 2022.

**Experts in the family justice system**: The working group had met recently and was compiling an action plan. It was currently co-opting a representative from the Department of Health and Social Care to help with the recommendations around NHS contracts and commissioning issues. A repeat event aimed at encouraging more experts into the family court will take place on 13 October.

The regional sub-committees were progressing well; they have held initial meetings, set up organising committees and were arranging their own events.

**Capacity assessment of children:** Melanie Carew informed the Council that the group had been trying to collate existing information to help inform the guidance but there was a paucity of information for solicitors. The potential for confusion over the word “capacity” had been noted. The group would resolve issue accordingly and be consistent in the language used. The next meeting would look at the information submitted by other organisations and consider who to co-opt onto the group. The Council noted that the group would allow itself sufficient time to produce a good-quality, sustainable piece of guidance. DJ Judith Crisp volunteered to join the group.

**Death by suicide within family proceedings: Awareness and support:** HHJ Jane Probyn provided an update. The group had met recently and agreed the allocation of work as outlined on its terms of reference. Discussion would take place at the next meeting in September as to who would succeed HHJ Probyn as chair. The interim report would be put back until November this year to allow for the change in leadership.

**4. Family Justice Board**

Neal Barcoe provided an overview of discussions at the recent Board meeting:

* Review of performance data in the family justice system.
* Reduction in social care referrals and how there had been a skew in those towards adolescents with complex needs
* Declining placement and adoption orders (although there was a recognition that figures for this year may be misleading as there had been a pause on complex adoption cases at the beginning of the pandemic).
* Governance – with a focus on more regular scrutiny on agreed priorities and on problem-solving within that governance.
* Both co-chairs were keen to get the most out of the Board and asked its members for their top five priorities on which to focus.
* A suggested new approach to bring LFJBs together on a regional basis to provide more collective support.

**5. Annual debate**

The debate would be scheduled for early December. The Executive Committee had discussed those suggestions put forward at the last Council meeting and proposed the topic “*Should the age of majority be reduced to 16 years*”. This could encompass issues such as deprivation of liberty, consent, marriage, medical treatment, best interest decisions and devolution. Potential speakers might include a FJYPB representative from Wales, a Welsh government official and a representative from an ethnic minority community.

Members agreed to the proposed topic and would consider potential speakers for Executive Committee’s consideration.

**6. Embedding the gains of remote working – what has worked well for the FJC?**

Members considered the advantages of online working and discussed how the Council could work in the future. Some felt that remote working was beneficial as it enabled greater attendance and an efficient use of time. Others wished to return to face-to-face meetings, citing the benefits of enriched debate, engagement and creativity and fewer distractions. Online meetings could be useful for the smaller meetings. It was acknowledged that hybrid meetings were difficult to navigate but may be necessary. The topic would be discussed again at the next meeting.

Mrs Justice Theis encouraged members to attend the October meeting in person although online facilities would be available if needed.

**7. Communications strategy**

Members welcomed the strategy which provided a clear direction for the actions needed to raise awareness of the Council and its work. The strategy incorporated an informative Powerpoint presentation for members to use at external meetings. A single slide showing recent updates would also be compiled on a regular basis. The strategy would be finalised over the summer and rolled out in October. It would be a dynamic document, particularly in terms of the list of interested parties. The Secretariat agreed to oversee the strategy and steer members accordingly. The Secretariat was asked to keep a record of how and when members have carried out communications activity and feedback on how well it worked.

It was that the FJC web pages were hosted on the Courts and Tribunals Judiciary website because the Council was sponsored by the Judicial Office (JO). Although the Council determined the content of the web pages, it was the responsibility of the JO to physically maintain them.

**8. Review of FJC guidance**

The Council had previously agreed to conduct a review of its published guidance. Several members had already offered to review, and update where relevant, certain guides but more assistance was needed.

The joint guides on Psychologists as Expert Witnesses and Paediatricians as Expert Witnesses should be worked on together. Jaime Craig had liaised with the British Psychological Society (BPS) and suggested that he and Fiona Straw review the guides with the BPS and the Royal College of Paediatrics and Child Health respectively. Sam Momtaz agreed to provide the legal expertise.

Claire Webb had earlier agreed to look at the mediation guides. Mavis Amonoo-Acquah volunteered to look at the Glossary of Terms in Family Proceedings and the leaflet on Going to Court about a Family Issue. Mr Justice Cobb would be happy to look at the money guides and liaise with the Financial Remedies Court where relevant. DJ Judith Crisp would help with the Financial Dispute Resolution Appointments guidance. Bernadette MacQueen offered to help where required. Rosemary Hunter would advise generally on the Domestic Abuse pages and Maud Davis offered a general perspective on any updates from the solicitor perspective.

Members were asked to update the guides where relevant and these would then be circulated to all members for comments. It should be recorded on the website when the updated version is published.

It was agreed that the website in general needed a wholescale review as much its content was out of date. The Council should agree what they would like the website to cover and to guide the Secretariat accordingly. Natasha Watson would assist with the review but other members’ contributions would be welcomed.

This would be a standing agenda item for forthcoming Council meetings, along with the latest number of hits on each guide.

**9. Research update**

Rosemary Hunter noted that research had been inhibited by Covid – fieldwork was difficult to undertake and academic time was taken up by online teaching. However, the following studies had taken place and Rosemary provided an outline of each.

**Public Law:**

Rebecca Pattinson et al., *Newborn babies in urgent care proceedings in England and Wales* (Nuffield Family Justice Observatory, 2021. [https://www.nuffieldfjo.org.uk/resource/newborn-babies-urgent-care-proceedings](https://www.nuffieldfjo.org.uk/resource/newborn-babies-urgent-care-proceedingsT) This ongoing research indicated substantial regional variations in the proportion of cases and a worrying trend of very short notice hearings which need further investigation in order to be addressed.

**Private Law / Domestic Abuse:**

Joanna Harwood, ‘*Presuming the status quo? The impact of the statutory presumption of parental involvement’* (2021) 43(2) Journal of Social Welfare and Family Law 119. Reporting views of professionals in an interview study.

SafeLives, *Understanding Court Support for Victims of Domestic Abuse* (Office of the Domestic Abuse Commissioner, 2021)

<https://domesticabusecommissioner.uk/wp-content/uploads/2021/06/Court-Support-Mapping-Report-DAC-Office-and-SafeLives.pdf>

The findings reflected earlier FJO research and the Harm Panel report, including the difficulties for LiPs to understand proceedings, the general lack of support and the retraumatising nature of proceedings.

It was agreed to identify speakers for future meetings from the existing list and new suggestions.

**10. Any other business**

The President informed members that the *View from the President’s Chambers* would be issued that day.

Amy Shaw announced the publication of the Civil Justice Council’s report on Mandatory Dispute Resolution. Members were encouraged to share widely. [Mandatory (alternative) dispute resolution is lawful and should be encouraged | Courts and Tribunals Judiciary](https://www.judiciary.uk/announcements/mandatory-alternative-dispute-resolution-is-lawful-and-should-be-encouraged/)

**11. Guest presentation**

Lord Justice Baker provided an update on the work of the Recovery Group.