

**Family Justice Council**

# Minutes of the meeting held on18 October 2021 (Hybrid meeting)

**Present in person:**

Chair: Mrs Justice Theis

Sir Andrew McFarlane, President of the Family Division

Jenny Beck, Private Law Solicitor

Melanie Carew, Cafcass

Jaime Craig, Child Mental Health Specialist

Judith Crisp, District Judge

Maud Davis, Public Law Solicitor

Bernadette MacQueen, Legal Adviser

Sam Momtaz, Silk

Mr Justice Peel, High Court Judge

**Present by teams:**

Neal Barcoe, Ministry of Justice

Rebecca Cobbin, HMCTS

Annie Bertram, Parents and Relatives Representative

Maria Kavanagh, Secretary to the Council

Colette Dutton, ADCS

Louise Fleet, Magistrate

Matthew Pinnell, Cafcass Cymru

Claire Webb, Family Mediator

**Secretariat:**

Paula Adshead

Daphna Wilson

Kim Webb

**Apologies:**

Rosemary Hunter, Academic

Fatima Ali, DfE

Mavis Amonoo-Acquah, Junior Barrister

Fiona Straw, Consultant Paediatrician

Natasha Watson, Public Law Solicitor

Leigh Shelmerdine, CJC

**1. Announcements**

* Her Honour Judge (HHJ) Karen Venables was welcomed to her first meeting having succeeded HHJ Jane Probyn as the Circuit Judge member. The Council looked forward to benefiting from her considerable experience as a family practitioner and a judge.
* Kim Webb was welcomed to the meeting. She will be replacing Paula Adshead, whose last meeting this was, as the Deputy Secretary from the 27 October. Paula will be taking early retirement after 38 years in the Civil Service.

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

The minutes of the last meeting were approved.

**Matters Arising:**

**Pensions on Divorce**: Following the 2019 publication of the Pension Advisory Group’s *Guide to the Treatment of Pensions on Divorce*, a new animation has been produced by Advicenow and the University of Manchester – a link has been sent to all members. The animation is aimed at divorcing couples and signposts to Advicenow’s Survival Guide to Pensions on Divorce. It will also be published on the FJC website.

**Consultation responses recently submitted**:

* Home Office consultation on Domestic Abuse Act 2021 Statutory Guidance: Thanks, was given to Rosemary Hunter who responded to a very tight deadline.
* Law Commission 14th programme of law reform: Maud Davis kindly drafted the letter inviting the Law Commission to consider the direct incorporation of the United Nations Convention on the Rights of the Child into domestic law.

**3. Business Plan**

**Use of covert recordings in family proceedings**:Jaime Craig confirmed that the group is planning to meet again in November and December to work on the draft guidance with a view to having something to circulate to the Council in January. This will come back as a substantive item at the next Council meeting.

**Communication and dissemination of FJC work *–*** This was covered in agenda item 10.

**Domestic Abuse:**

Paula read out the following update provided by Rosemary

* *We have a Working Group meeting scheduled for 4 November to recommence work on the Best Practice Guidance.*
* *Our Guidance on Safety from Domestic Abuse and Special Measures in Remote and Hybrid Hearings has been referred to in a variety of contexts, including one of the articles noted in my report on New Research, and in Judicial College training.*
* *Section 63 of the Domestic Abuse Act 2021 came into force on 1 October, along with consequential amendments to the Family Procedure Rules Part 3A, Practice Direction 3AA and Practice Direction 12J. Parties alleging they are victims of domestic abuse in family proceedings are now deemed to be vulnerable witnesses, thereby requiring consideration of their need for special measures in court.*

The importance of section 63 and the change in practice was noted and both DJ Judith Crisp and Jenny Beck agreed to mention this at future respective training events.

**Experts in the family justice system**: The second webinar designed to encourage experts into the family court was held on Wednesday 13 October. The event was reasonably well attended and despite some initial technical issues, the session went well, ending with a successful and engaging question and answer session. The recording will be published on the FJC website in due course.

Regional Expert Committees are now up and running and work will soon begin on organising a symposium for May 2022. Action groups have now been set up within the Committee to take forward the recommendations arising from the President’s report.

Mr Justice Williams intends to attend future Council meetings to provide an update to ensure that this topic remains a working group of this Council.

**Capacity assessment of children:** Melanie Carew confirmed that the group met recently to discuss a rough draft of the guidance. The intention is to have a draft ready to share with other agencies for consultation and the Council by the end of December.

**Death by suicide within family proceedings: Awareness and support:** Jaime explained that the last meeting was cancelled. The group agreed to look at who would be chairing it before agreeing to any more meetings. The group is clear on what it will cover.

**Medical Mediation:** This is currently on hold until early 2022.

The Council was reminded that the activity on Judgecraft has been removed from the business plan.

**Child Protection Mediation pilot**: Previously an FJC workstream, this project is now being undertaken by What Works for Children in Social Care to determine whether CPM has a positive effect on outcomes for children and families. The pilot will involve 50 families and will run until April 2023.

Following questions about the evaluation raised by Rosemary Hunter at the recent Executive meeting, Claire Webb confirmed that What Works will send over the logic model and paperwork, which goes behind the summary to Rosemary, who has agreed to consider and provide feedback and tips to What Works on researchers.

Claire confirmed that Cafcass (Portsmouth) are aware of the pilot and have been involved in the meetings.

**4. New Working Groups**

The Council agreed to the setting up and membership of the following new working groups:

**Parental Alienation**

Following a presentation by Dr Adrienne Barnett on Parental Alienation at an earlier Council meeting, it was suggested that a new working group be set up to look at the issues, with a view to formulating guidance.  The following members have expressed an interest in joining this group: Judge Venables (co-chair), Jaime Craig (co-chair), Matthew Pinnell, Jenny Beck, Rosemary Hunter, Claire Webb, Fiona Straw, Melanie Carew and Rachel Thomas from the Children’s Commissioner for Wales’ Office.

Melanie and Maud have sought some useful information about parental alienation from Cafcass and Nuffield respectively which will be shared with the group. Kim will ask Nuffield for any further information.

Louise Fleet suggested that a member of the Magistrates Court Committee join the group.

Bernadette MacQueen offered her assistance to the group from the Legal Advisor/Magistrates perspective.

**Financial Remedies**

Mr Justice Peel has proposed an ad hoc committee, on behalf of the Council, which he has agreed to chair to respond to financial remedy matters as and when they arise, rather than having a particular objective in mind. Examples include:

1. Responses to consultations.
2. Updating the financial remedy guidance on the website.
3. Being on hand to help the FRC such as helping to draft information guidance.
4. Any wider FJC work which would benefit from some financial remedy input.

Mr Justice Peel explained that it was important that this was an FJC working group which should not tread on the toes of the Financial Remedies Court, which is ongoing and developing. DJ Crisp has offered to help with guidance on this. Mr Justice Peel suggested an initial meeting with the group and deal with on an ad hoc basis thereafter. Jenny Beck offered to assist the group, if anything came up in relation to Legal Aid or domestic abuse.

1. **Family Justice Board (FJB)**

Neal Barcoe provided the following update and plans for discussion at the upcoming quarterly Board meeting on 19 October:

* Will Quince, the new Department for Education (DfE) minister will chair the meeting alongside Lord Wolfson. The Council commented that it was good that Lord Wolfson would continue to chair to achieve some consistency.
* Family Justice Young People will provide an update on their work and 10-year anniversary.
* Data and what is happening in the system and where pressures are.
* Update from Jacky Tiotto, CEO of Cafcass on prioritisation protocol and the Covid recovery group.
* Neal will update on Private Law pilots and pathfinders in North Wales and Dorset.
* DfE will update on regional recovery fund and how this is supporting work on public law side.
* Previous discussion around how the FJB should operate going forward has not been put to Will Quince yet as he is new.
* Anticipating changes in how it operates when the Board meets in January.
1. **Consultation Responses**

**Independent Review of Children’s Social Care: Case for Change**: Maud explained that she was trying to put across, in her response, that the Children Act works and is fit for purpose but trying to inject the rights based element and research to give an evidence based response. Maud gave thanks to Rosemary and Collette Dutton for their assistance.

The Council agreed for DJ Crisp to suggest to the course director in the Judicial College that training for judges on child development is fed into public law continuation training. Currently, there is a good session in the induction training, but it is not repeated.

The Council thanked Maud for her work on the response.

1. **MoJ Call for Evidence on Dispute Resolution**:

Mr Justice Peel thanked Claire Webb and Nigel Dyer QC for their contributions to the response and for Rosemary’s valuable amendments and additions. The response is due by the end of October.

In response to Rosemary’s question about whether there was any evidence on the success rate of private FDRs Mr Justice Peel explained that there is no evidence as it operates outside the strict legal system on a private basis.

There is little in the way of early neutral evaluation of children’s work. A limited amount of collaborative and arbitration work, so something that might want to be looked at further down the line.

Mr Justice Peel’s report initially recommended a rule change permitting judges to require parties to attend dispute resolution. Council members expressed concern around cases of domestic abuse, the voice of the child being heard as mediation tends to be very much for parents and the confidence of mediators.

1. **Events**

**Debate: Wednesday 8 December – “Should the age of majority be reduced to 16 years?”**

The event will be a hybrid event, taking place at Prince Philip House, London with the ability for attendees to join via a live stream.

Ruth Henke has agreed to speak, subject to President’s approval. Matthew Pinnell confirmed that he is due to discuss with the Family Justice Young Persons Board (FJYPB) later this week. It was agreed not to take any further actions with the Welsh Youth Parliament until this discussion has taken place.

Mrs Justice Theis has had discussions about the possibility of a lawyer to respond to Ruth with experience of direct impact of changes on communities. To be supported by someone with experience within the voluntary sector.

Melanie Carew suggested and agreed to pass the details on for Just for Kids

Sam Momtaz highlighted the repercussions of children leaving care two years earlier and suggested getting someone with experience or on local government to talk about this.

It was confirmed that the suggestion of the Deputy Director (DD) from the Welsh government would no longer be required but would be welcome to attend the event.

**Conference:**

The Council discussed and agreed that the next conference would be held March 2022, in person. The conference will include the Bridget Lindley Memorial Lecture (speaker to be determined) followed by break out groups to discuss the FJC work stream topics. This would help to showcase the work of the FJC and feed into the communication agenda item by getting the word out to a wider audience.

Members were invited to email in any other suggestions for topics and speakers.

1. **Future format of meetings**

The Council agreed that future Council meetings would be held in this hybrid format. Executive meetings will continue to be held remotely. Working groups will decide the format of their meetings individually.

1. **Communications Strategy**

Paula explained that the Council is now in a position to stand up the communications plan. It was suggested at the Executive meeting that a month before each Council meeting, the Secretariat would write out to members with a set of questions inviting feedback on what has been taken forward and where members have used the slide pack to highlight the work of the FJC. A summary paper would then be prepared for the Council meeting.

It was also suggested that a question asking members to reflect on what they have done to promote the work of the Council be included in the self-appraisals, which will be resurrected.

The Council discussed various suggestions to increase the knowledge of the Council including:

* A short slot about the FJC in judicial induction training.
* Louise Fleet will present the slide pack at the Family Courts Committee, which draws magistrates from across the country.
* A base article for various magazines (The Magistrates Association, Community Care, BASW and Family Law).
* A quick update on the FJC to be added as standing agenda item on other meetings ie FLBA, Law Society or Family Committee.
* Members agreed that when attending events to speak about the FJC, they are not offering views on behalf of the FJC but can offer to take things back to the Council for discussion.
* Open meetings to be yearly especially with the ability to join remotely.

There was continued discussion from the last meeting about the FJC having its own website, and discussion around the use of Twitter to publicise events and guidance and consultation responses. Paula confirmed that we have the use of the Judicial Office Twitter account, however, there remains a problem with limited resources within JO to keep both forums monitored and updated.

**11. Review of FJC guidance**

There have been a number of volunteers to review and update the FJC guidance on the website but there are a couple of documents that volunteers are still needed for. Paula recommended collating all the comments and updates for the full Council’s comments before passing to the JO Comms Team for implementing the changes to the actual website.

The Council was asked to note that the JO comms team is doing a review of the whole of the JO website, which could add additional time.

Jaime clarified that the guides on Psychologists as Expert Witnesses and Paediatricians as Expert Witnesses are not joint guidance but lots of the same people are involved and so will need to be reviewed jointly with other bodies.

1. **Liaison with the Judicial College**

DJ Crisp agreed to be the link with the College following the departure of HHJ Probyn.

1. **AOB**

Maud raised the question of whether better use could be made of expert reports, which are costly and whether they could be used to assist families who were caught up in repeat care proceedings. Could organisations such as Pause be used to channel the request to claim practical help in the real world?

After extensive discussion, the Council agreed that this would be a separate item at the next agenda with some scoping on what is available in terms of letters of instruction.

**Research update –** Rosemary provided an update paper for the Council.

**14. Guest presentation**

Dr Rob George, Professor of Law and Policy at UCL Faculty of Laws gave a talk about his recent study on autistic court users and the family justice system.