

**Family Justice Council**

# Minutes of the meeting held on 26 April 2021 (by MS Teams)

**Present:**

Chair: Mrs Justice Theis

Fatima Ali, Department for 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

Colette Dutton, ADCS

Louise Fleet, Magistrate

Rosemary Hunter, Academic,

Maria Kavanagh, Secretary to the Council

Bernadette MacQueen, Legal Adviser

Matthew Pinnell, CAFCASS Cymru

Fiona Straw, Paediatrician

Natasha Watson, Public Law Solicitor

Claire Webb, Family Mediator

David Williams, High Court Judge

**Secretariat:**

Paula Adshead

Daphna Wilson

**Apologies:**

Sam Momtaz, Silk

Jane Probyn, Circuit Judge

**1. Announcements**

* Mr Justice Peel had succeeded Mr Justice Williams as the new High Court Judge member. Mr Justice Williams was thanked for his contribution to the Council over the last three years, most notably his leadership on the Medical Mediation and Experts workstreams. He would continue to lead the Experts Sub-Committee and remain a member of the Medical Mediation Working Group.

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

The minutes of the last meeting were approved.

**Matters Arising:**

*Terms of reference:* Members had reviewed the Council’s terms of reference and agreed that they were still current.

*Recent webinars:* Both the Experts and Adoption events had been hugely successful, both in terms of content and organisation, and had achieved a high level of engagement. The video recordings would be published on the FJC website once the technical problems had been resolved. Now published at:

[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/)

[Experts and the Family Justice System: Widening the Pool | Courts and Tribunals Judiciary](https://www.judiciary.uk/publications/experts-and-the-family-justice-system-widening-the-pool/)

*Independent Review of Children’s Social Care – call for evidence:* The Council’s response had been submitted and information about the Council’s work on Child Protection Mediation was also provided. A report was expected in July and it was agreed that the Council should continue to engage where relevant.

*Family Procedure Rules - amendment to the over-riding objective*: The Family Procedure Rules Committee (FPRC) had agreed that the proposed amendment would be kept under long-term consideration, in the wider context of the Domestic Abuse Bill and the Harm Panel recommendations.

*JUSTICE working party:* The party had set up three subgroups, one of which was looking at before, during and after court proceedings. It was conducting comparative research with other countries and the Family Justice Observatory was carrying out further analysis on some of its data. Rosemary would continue to liaise on behalf of Council and report back as necessary.

**3. Business Plan**

**Judgecraft in relation to litigants in person:** There were no plans to produce further videos as yet. The existing videos were proving useful in induction courses and would remain on the Learning Management System. It would be helpful to discuss with course trainers what material might be useful in future, such as remote hearings and domestic abuse. The video links would be sent to members and the decision to remove the activity from the Business Plan would be deferred to the next meeting.

**Child Protection Mediation:** What Works for Childrens Social Care had agreed to take this forward as part of its Practice in Need of Evidence (PINE) programme. They would conduct a small review with the Family Mediation Council and Portsmouth City Council and, if successful, might consider funding a full pilot. Claire Webb agreed to monitor developments and DJ Judith Crisp would continue to attend meetings with the Nuffield Foundation. The activity would now be removed from the Business Plan but relevant updates would be provided at future Council meetings.

Neal Barcoe reported that there was no MoJ funding for the project but the Department for Education had shown some interest and would be discussing the matter in more detail.

**Use of covert recordings in family proceedings**:Work on the guidance had been delayed due to other priorities. Natasha Watson was currently seeking examples of local authority policies on the use of overt recordings of professionals. She would also consider recordings and publication of remote and hybrid hearings and asked members to provide examples. Recordings of video contact during lockdown where supervised contact had not been possible might also be considered. A letter to the Information Commissioner’s Office regarding the publication of recordings would be drafted shortly and discussions were due to take place with Annie Bertram on guidance for parents.

Jaime Craig would consider the information gathered from the Family Justice Young People’s Board. He also suggested liaison with the Experts Committee in relation to the recording of experts’ assessments.

Several members stressed the need for guidance for practitioners, particularly as covert recordings were becoming common practice. Given the extent of the issue , it was agreed that the guidance should comprise two parts: Part 1 to give key pointers about the status of evidence and the issues that need to be considered by the court and Part 2 to provide guidance on the broader issues about how professionals manage covert recordings.

**Domestic Abuse:** Rosemary Hunter provided an update on the Domestic Abuse Bill. It was noted that the bar on direct cross-examination was not as the Council had proposed in its evidence, but the same effect had been achieved.

Relevant parts of the FJC best practice guidance *Safety for Victims of Abuse in Remote and Hybrid Hearings* had been incorporated into HMCTS *notice of Safety, Protection and Support* which would be sent to all parties ahead of a hearing. It was noted that a recent Court of Appeal decision on coercive control would provide a useful steer for the working group when it resumed work on its main guidance.

**Self-harm in family proceedings:** The objective of the new working group would be amended to read: To investigate the risk and resilience factors for suicide and self-harm and to consider what training would be helpful to support the judiciary and court participants.

**4. Experts in the family justice system**

The sub-committee had recently hosted an introductory online event for medical and allied professions, judiciary and lawyers. The event introduced the work of the regional committees and aimed to encourage more expert witness to the family court. It generated considerable interest and inspired several more people to join the regional committees. The committee planned to host a similar event in October and a symposium in May 2022.

The committee planned to liaise with medical and legal bodies to help take forward the other recommendations of the President’s Experts Working Group, particularly around NHS contracts.

It was noted that this workstream would benefit from additional administrative support.

**5. Communications and dissemination of FJC business**

Paula Adshead was compiling a communications strategy to help raise awareness of Council business. The strategy would benefit from the engagement of all members. Activities would include standing agenda items at other organisations’ meetings and a newsletter for both professionals and families. Members were asked to act as an ambassador for the Council and to inform the Secretariat which organisations they would liaise with.

The Council agreed that the guidance published on the FJC website should be reviewed and re-organised into subject order. Statistics had been obtained on the number of views each document had generated. Members were asked to let the Secretariat know which documents they could take responsibility for and whether they should be removed, archived or updated.

The website in general would benefit from a re-structure to make it more accessible. It was suggested that it could act as a one stop shop, with sections for professionals, families and litigants in person, and provide links to other resources.

**6. Family Justice Board**

The new Minister, Lord David Wolfson of Tredegar QC, would co-chair the next FJB meeting in May. The agenda was likely to include data trends, governance and the delivery of reform and plans for the Local Family Justice Boards. It was suggested that the plans include dissemination of the FJC business summary and that the Council hosts a Teams meeting with LFJB chairs.

**7. Adoption – taking forward issues arising from seminars**

Mrs Justice Judd, lead judge for adoption in England and Wales spoke about the work of the Adoption Sub-Committee (of the Public Law Working Group). The committee was looking at the current legal process for the making of adoption orders and the changes needed to make it more efficient. There were five work strands which included contact, step-parent adoption and international adoption. The committee expected to report in early 2022. It was noted that the recent FJC seminars on adoption and the Bridget Lindley Memorial Lecture had given the committee a valuable insight.

Members discussed the reluctance of some adoptive parents to agree to contact and the subsequent need for an education process; flexibility in contact arrangements to reflect circumstances; and the difference in contact between birth parents and birth siblings. It was noted that regional consortiums for adoption had changed the way adopters were recruited and could be engaged in discussions. The Council agreed to contribute to the work of the committee where needed.

**8. Annual debate**

The Council’s annual debate would take place in late November/early December. The topics suggested by the Executive Committee around medical treatment, children’s rights and capacity were considered but not deemed suitable. As a result of a recent judicial decision, the NHS had set up a clinical ethics group on the basis these matters would be considered outside the court. As such, it might not be a live issue later in the year. The Council agreed that it was a very wide topic encompassing not only legal but social, political and health issues and would require a lot of preparation. It was also noted that a working group was being set up on assessing the capacity of children, with a view to producing guidance.

The following topics were discussed:

* Private law reform – ripe for change and reorganisation, although already moving ahead and the landscape would be different by the end of the year.
* Covert recordings, social media – how we are responding to an age of social media, is it assisting justice or not? Is it useful in family law or otherwise?
* What constitutes a family? The structure of a family. Legal parenthood –how many legal parents should a child have? Who is my parent?
* Position of children within their family; how families support, not own, children. Welfare being paramount. Who has parental responsibility? Where is dividing line - parents or state?
* Covid – what have we learned through remote hearings and contact? What should we retain or lose?
* How the world has changed after Covid; where are we now, what is the world we are now practising in, what is the impact of the last year and how will we start to see that in the cases that come before court, what are going to be issues for us?

The Executive would consider the topics further and circulate its final suggestion(s) to the Council.

**9. Research update**

Rosemary Hunter outlined three recent reports:

* Family Justice Observatory: *Uncovering private law: Who’s Coming to Court in England?*

<https://www.nuffieldfjo.org.uk/resource/private-family-law-whos-coming-to-court-england>

* Tommie Forslund et al: *Attachment goes to court: Child protection and custody issues.* <https://www.tandfonline.com/doi/full/10.1080/14616734.2020.1840762>
* E Kay M Tisdall, Fiona Morrison and Judy Warburton: *Challenging undue influence? Rethinking children’s participation in contested child contact.*

**10. Any other business**

*UNCRC:* Maud Davis raised the question of why English law does not incorporate, or has not been brought in line with, the Convention, particularly given developments in Scotland and Wales. She suggested that the Council may wish to propose to the Law Commission that the matter be considered as part of its law reform programme. It was noted that Law Commission projects must have ministerial support from the relevant government department. It was agreed, therefore, to approach Neal Barcoe in the first instance to determine whether the Ministry of Justice would support the proposal. If declined, an alternative route should be found.

*Statistics in private law applications:* Rosemary Hunter had produced a briefing paper looking at the figure used in relation to the number of people going to court when their relationship broke down. The paper had been submitted to the MoJ and would be considered by the Private Law Advisory Group.

**11. Guest presentation**

Dr Adrienne Barnett, Senior Lecturer in Law at Brunel University London, spoke about her research on parental alienation. Discussions followed about the rise in cases, expert opinion and the voice of the child. Members suggested that the Council might consider setting up a working group to look at these issues and perhaps formulate guidance, drawing on earlier FJC/BPS guidelines. Natasha Watson, Jenny Beck, Rosemary Hunter and Annie Bertram supported the proposal.