

# Family Justice Council

**Minutes of the meeting held on**

**24 January 2022 (Via Teams)**

**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

Neal Barcoe, Ministry of Justice

Rebecca Cobbin, HMCTS

Rosemary Hunter, Academic

Maria Kavanagh, Secretary to the Council

Colette Dutton, ADCS

Louise Fleet, Magistrate

Matthew Pinnell, Cafcass Cymru

Claire Webb, Family Mediator

Fiona Straw, Consultant Paediatrician

Natasha Watson, Public Law Solicitor

Amy Shaw, CJC

**Secretariat:**

Kim Webb

Daphna Wilson

**Apologies:**

Annie Bertram, Parents and Relatives Representative

Fatima Ali, DfE

Mavis Amonoo-Acquah, Junior Barrister

Leigh Shelmerdine, CJC

**1. Announcements**

* Mrs Justice Theis confirmed that, alongside the President and the secretariat, she would be considering recruitment to the Council to ensure that there is the right balance between fresh eyes coming into the Council, whilst not losing the valuable expertise and experience that we already have. She will report back with more information at the next Council meeting.

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

The minutes of the last meeting were approved.

**Matters Arising:**

DJ Judith Crisp confirmed that she had spoken to the Judicial College to ensure that a slot about the FJC would be woven into the induction and continuation courses and would also form part of the pre reading on the public and private law induction course.

Mrs Justice Theis recommended for members to access the Advicenow’s animation about pension, which is now on the FJC website.

**14th Annual Debate (Should the age of majority be reduced to 16?’:**

There was agreement that the recent annual debate, which was held as a hybrid event, was very successful and that future events should continue to offer the hybrid option to allow the opportunity to engage a wider audience. Consideration will be given to hosting the event at a court. It was suggested that in order to give the online audience a sense of the atmosphere in the room, a camera could be pointed at the audience in the room.

The topic was interesting and can be used for outreach work in schools and colleges.

**Consultation responses recently submitted:**

**MoJ Call for Evidence on Dispute Resolution**: Thanks to Mr Justice Peel and Claire Webb. Rosemary Hunter also provided valuable amendments and additions to the draft.

**Independent Review of Children’s Social Care: Case for Change**: Thank you to Maud Davis for drafting this response. She received contributions from Rosemary, Collette Dutton and DJ Crisp.

**Child Protection Mediation pilot:** Previously an FJC workstream, this project is now being undertaken on 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. Claire Webb confirmed that most of Rosemary’s feedback has now been incorporated. What Works were not able to incorporate Rosemary’s concerns on the evaluation due to it being a small pilot.

This will be placed on the agenda for the January 2023 Council meeting. Claire will feedback at an earlier meeting if possible.

**3. Business Plan**

**Use of covert recordings in family proceedings**:Natasha Watson, co-chair alongside Jaime Craig confirmed that the final draft of the guidance was shared with the Council in preparation for the meeting. She proposed that the Council be given a short deadline to review and comment on the guidance. Following this, the working group will meet to review and make any required tweaks.

It is proposed that the draft goes out for consultation to some specific bodies before it comes back to the Council at the next meeting for final sign off before publication.

The working group will look to develop a shorter and simpler guide for litigants to run alongside the main guide, which is aimed at professionals. The consultation process should also include advice from organisations that deal with litigants in person.

**Communication and dissemination of FJC work *–*** This was covered in agenda item 8.

**Domestic Abuse:** As chair of the DA working group, Rosemary stated that the working group had given itself until the end of January 22 to rework the chapters, incorporate the consultation responses, as well as the many and significant developments that have occurred in the domestic abuse area. The aim is to have a new draft to present to the next Council meeting with a view to it being ready to launch in the summer. Rosemary confirmed that Mrs Justice Knowles will be consulted as the lead judge for DA matters.

**Experts in the family justice system**: Mr Justice Williams sent his apologies as he was unable to attend. Fiona Straw provided an update on behalf of the group where the aim is to increase the pool of experts giving evidence in the family court.

* Webinars held in March and October 2021, which included doctors, psychologists and legal practitioners.
* Six regional committees and a committee in Wales has been established, which includes a judicial and an expert lead.
* Promoting the mini-pupillage scheme
* Six working groups have been established to take forward the recommendations within the report. Hope to feedback on progress at the next Council meeting.
* Aim to hold an experts’ conference later in the year.
* Mr Justice Williams has published the first quarterly newsletter.
* The working group will continue to meet every three months.

It was suggested that the regional committees should build relationships with local safeguarding and the health and wellbeing boards within every local authority area as these are multi agency and are led by both health, social services and the police. The advantage is these boards have budgets and have a degree of power and influence.

**Competency assessment of children:** Melanie Carew confirmed that a draft of the guidance had been approved by the working group and welcomed comments from the wider Council. Following this, the draft will be sent to the ALC, Law Society, Resolution and the Family Justice Young People’s Board for comment. An Expert Witness Advisory group within the British Psychological Society has agreed to review the section which refers to when an expert is required to help. Subject to final approval from the Council, the aim is to have the guidance ready to publish in the spring.

It was agreed that to reduce the potential for confusion, the word ‘capacity’ would be replaced by the word ‘competence’. Rosemary agreed to provide specific feedback directly to Melanie.

**Death by suicide within family proceedings: Awareness and support:** Colette Dutton, who has taken over as the chair of this working group confirmed that the group will resume on Thursday 27 January. The group will start by reviewing the list of tasks allocated at the last meeting in June 2021.

**Responding to allegations of parental alienation:** A new working group, which is chaired by Jaime Craig and HHJ Karen Venables. The group has met once to discuss and agree the terms of reference. The aim is to have a draft of the guidance by the summer, followed by a consultation and then revision process. The group hopes to bring final version back to the Council in January 2023.

The guidance will include a section on what sort of expert is needed and what should be asked of them. It was suggested that this part may need to be hived off as a separative piece of guidance with its own consultation process.

**Financial Remedies:** Mr Justice Peel confirmed that a new working group has been set, largely constituted from the previous working group. It met for the first time on 17 January 2022. The group will be looking at three pieces of guidance on the FJC website:

* Guidance on Financial Needs – principally used by the professions. A sub-group headed by Philip Marshall QC. Expect the guidance to be updated by the summer.
* Sorting out Finances on Divorce – this document has been used by AdviceNow and other self-help documents. A sub-group headed by HHJ Philip Waller will look into where and how this is being used and how to go forward.
* Treatment of Pensions on Divorce – The Pensions Advisory Group (PAG) chaired by HHJ Edward Hess is due to update this. It was confirmed that PAG originally started as an FJC working group but developed an independent existence. It was agreed that PAG would continue to update the guidance but with the Council involved to ensure that the guidance on the FJC website is up to date. The Council would also like to know about any steps taken to assist AdviceNow in updating their guide.

Mr Justice Peel intends to use the group to have a separate discussion about transparency and reporting the family court to encourage an exchange of views about the issues in financial remedies court.

**4. Working Groups**

**Medical Mediation:** This work stream was paused and put on hold until early 2022. Fiona has been in contact with the College of Paediatrics to see if it is interested in working with the FJC on this and is waiting for a response. This will be discussed at the next meeting.

**Making better use of expert reports:** This workstream will be incorporated into the Experts sub-committee.

The following points were raised for Fiona to take back to the sub-committee:

* Ensuring letters of instruction crafted to include realistic requirements
* Final care plan should include all information gained in care proceedings – Natasha offered to produce a note with more detail on her thoughts.
* Law Society has templates on its website for letters of instruction – could these be revised?

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

Neal Barcoe provided the following update for next FJB meeting on 22 February 2022:

* Six priorities will be presented to the Board for sign off. Three for public law, which includes investigating case duration, understanding emergency short notice applications and improving pre-proceedings practise.
* For private law – understanding and influencing wider societal views on separation and use of court, understanding the impact of various pandemic measure ie PD36Q and improving support for local areas to scrutinise performance.
* At each meeting, there will be a deep dive on one of those areas to come up with propositions for the Board to consider.

The Council discussed the need for better communication between the Council and the Board so that each is aware of what the other is doing. It was suggested that the minutes of the FJB be provided to the Council as part of the set of papers. Whilst the FJB papers are published, there is a delay.

The President recognised that the FJB needs to take ownership of the family justice system. It is trying to set up a system where leaders can come together to discuss and agree policy. The FJC needs to be aligned with this. The current practise of the FJC reporting to the FJB is not helpful.

1. **Consultation Responses**

The draft consultation response has been drafted by Rosemary. Rosemary thanked HHJ Venables, Jamie Craig, Jenny Beck and Dorothea Gartland for their contributions. It is in response to the FPRC consultation as part of the Domestic Abuse Act new provisions. The new Practice Direction 3B, focusses on the cross-examination provisions and the steps that need to be taken before a lawyer appointed to the court can be engaged.

Rosemary confirmed that the consultation response is due by 11 February 2022. A sub-group of the Domestic Abuse working group is also intending to provide feedback to the MOJ on the draft statutory guidance where it considers the most controversial issues to be. It will also add that an explicit articulation between PD3B and PD3AA would be welcome.

1. **FJC Conference 2022 (55)**

This year’s annual conference will be held on Wednesday 6 April 2022 in Bristol. The proposed title is ‘Private Law, a proportionate and safe approach?’. Helen Adam, the chair of the Private Law Working Group, which produced the Family Solutions report has been approached to give the keynote speech, also known as the Bridget Lindley Memorial Lecture. The topic aims to look at private law work coming into or heading to the court and look at ways of how it can be diverted.

Members were encouraged to attend the event to provide support.

It was agreed that this topic would need to be handled sensitivity so as to ensure that those who genuinely need to come to court are not diverted away. It will also need to take recognise the differences in the outer court space between England and Wales.

Jenny Beck, Bernadette MacQueen, DJ Crisp and Mavis Amonoo-Acquah will assist with the arrangements for the conference.

1. **Communications Strategy**

It was confirmed that the FJC will not be allowed it’s own website or Twitter account but will remain part of the Judicial Office platform.

Thanks, was given to everyone who completed the communications questionnaire, which demonstrated an impressive list of actions members have taken or are due to take to promote the work of the FJC.

The following was discussed and agreed:

* Members to try and get a periodic slot at committees that they speak at as the work of the FJC is dynamic and changing.
* Slides to be updated to reflect the Parental Alienation working group.
* Confirmation given to Melanie Carew that the slides can be circulated to Cafcass without the requirement for a meeting.
* Activity involving the Local Family Justice Boards (LFJB) should continue. Members should contact the secretariat if they require a contact for their local LFJB.
* Before speaking at events, members are asked to contact Maria Kavanagh and Kim Webb to check whether there are any known sensitivities that need to be considered.
* Bernadette has agreed to take on the action of drafting a base article which can be used across different networks and publications. Jenny offered her assistance.
* It was agreed that an article for regular publications such as the Magistrates Association (MA) magazine and Family Law should be written every time a working group publishes a new piece of guidance. Judicial Assistants may be able to help with the drafting of this alongside a Council member. Drafts should be sent to the secretariat.

**9. Review of FJC guidance**

Kim Webb confirmed the current plan is to move the FJC website over to the new platform in around April 2022. This is part of the review of the whole of the Judicial website. It is not yet known whether the FJC pages will be in a different colour in order to distinguish from the remaining site. The web team are conducting feedback sessions with the public to ascertain the best way for information to be presented on the judicial website.

For information and guidance on the current website, the following was agreed:

* The Family Court guide would contain very useful information, if it wasn’t so out of date. This part of the website will be put on hold until such time as it is moved onto the new platform. In the meantime, DJ Crisp will contact the secretariat to advise what parts are obsolete and can be taken down.
* It would be useful to have the President’s guidance stored somewhere on the Judicial website.
* There is a distinction between ‘guidance’, which needs to be reviewed and updated periodically and standalone reference material or reports. For the latter, it would help to have some lines added to the website to add some context. Website should include the date it was last reviewed.

1. **Research update**

Rosemary highlighted material from her report, which included both public law and private law. The following key observations were made:

* There is a huge variation between local authorities in the use of long-term foster care.
* Children are least worse off when cared for by relatives rather than non-relative foster carers.
* The piece on uncovering private family law, adult characteristics and vulnerabilities reinforces the fact that parties in private law proceedings do not reflect the general population – they are highly atypical and highly vulnerable in terms of physical and mental health and exposure to domestic abuse.
* Domestic abuse doesn’t end on separation and the family courts have a role to play to ensure safety.
* In the Sikh Punjabi community, there is cultural pressure not to report or speak about domestic abuse within and by the family. Useful for practitioners to take account of the observation that there is a high prevalence of multiple perpetration in those cultural communities.

1. **AOB**

Rosemary said there needed to be a better protocol for a link between the forms working group of the FPRC and the FJC. Mrs Justice Theis and Rosemary agreed to deal with this outside of the meeting.

Fiona had been asked to raise an issue by Peter Green, the chair of the National Network of Designated Professionals in Safeguarding. It concerned the placement of vulnerable children inappropriately in hospitals whilst waiting care placements. Fiona will speak to Colette Dutton outside of the meeting and compose an email to send to the secretariat. The secretariat can then determine the appropriate working group to send this to.

Maud Davis said that she would circulate via the secretariat some information on the Home Office working group, which has been set up on age assessment for migrant children.

**14. Guest presentation**

Tina Haux, Director of the National Centre for Social Research’s Centre for Children and Families gave a presentation entitled ‘What is shared care?’.

**\*\*Monday 28 March 2022\*\***