

**Family Justice Council**

**Minutes of the Meeting**

**Held on 4 July 2022 (10:30 to 13:00) (Remote meeting)**

**Open Meeting**

**Member Attendees:**

Chair: Mrs Justice Theis [Theis J]

Sir Andrew McFarlane, President of the Family Division

Mr Justice Peel, High Court Judge [Peel J]

Jaime Craig, Child Mental Health Specialist

Rosemary Hunter, Academic

Karen Venables, Circuit Judge

Neal Barcoe, Ministry of Justice

Maud Davis, Public Law Solicitor

Louise Fleet, Magistrate

Bernadette MacQueen, Legal Adviser

Ruth Henke, Silk

Matthew Pinnell, Cafcass Cymru

Fiona Straw, Consultant Paediatrician

Claire Webb, Family Mediator

Mavis Amonoo-Acquah, Junior Barrister

Melanie Carew, Cafcass

Rebecca Cobbin, HMCTS

Judith Crisp, District Judge

Colette Dutton, ADCS

Natalia Schiffrin, Magistrate

Leyly Bogue, DfE

Beatrice Longmore, Children’s Commissioner

Leigh Shelmerdine, CJC

Nick Lee, Deputy Director Judicial Office

**Secretariat:**

Maria Kavanagh, Secretary to the Council

Kim Webb

Daphna Wilson

**Apologies:**

Jenny Beck, Private Law Solicitor

Natasha Watson, Public Law Solicitor

**Agenda Item 1 – Welcome and Announcements**

1. Theis J welcomed the guests to the Council’s annual open meeting and explained the housekeeping rules. She thanked everyone who had submitted a question for the Council, and explained that due to the number received, six questions had been selected, which would cover the general themes of topics raised.
2. Ruth Henke QC was welcomed to the meeting as the new silk member and Natalia Schiffrin was welcomed as the new magistrate member.
3. This was Louise Fleet’s last meeting as the outgoing magistrate member. She thanked the Council for the opportunity.
4. Annie Bertram, the Parent and Family representative has resigned from the Council for personal reasons but will continue to be part of the Death by Suicide working group. The recruitment campaign for her replacement closes on Friday 8 July. Members were encouraged to forward the advert as applicable.

**Agenda Item 2 – Minutes of last meeting and matters arising**

1. Minutes were approved subject to a minor spelling correction.

**Matters Arising:**

1. Most actions have either been completed or are contained within the agenda.
2. After discussion between Theis J and Fiona Straw and the Executive committee, it was agreed that the ‘Wellbeing’ workstream will not be taken any further by the FJC. It considered that due to each discipline within the family justice system having its own policy that the FJC would not be able to add anything helpful and may risk being confusing.
3. The success of the annual conference in April (Private Law: a proportionate and Safe approach) was noted. The feedback from participants reflected the most useful session was the Helen Adam lecture. The least valuable was the breakout sessions, largely due to the breadth which they were trying to cover. This feedback will be taken into account when planning for next year’s conference which is due to go ahead in March 23.
4. Thanks, were given to HHJ Karen Venables, Natasha Watson, Rosemary Hunter, Fiona Straw and Claire Webb for their work on the recent consultation response: Call for Evidence, House of Lords, Children and Families Act 2014.
5. Acknowledgement was given to two important pieces of guidance, which have recently been published on the FJC website. Thanks to Melanie Carew for drafting a short introductory piece for the launch of the competency assessment guidance, which is due to be published shortly in Family Law. ([Guidance on assessing child’s competence to instruct a solicitor](https://www.judiciary.uk/wp-content/uploads/2022/05/FJC-assessment-of-competence-of-children-guidance-final.pdf) and Interim guidance in relation to expert witnesses in cases where there are allegations of alienating behaviours – conflict of interest)
6. The web team has been unable to provide information on the number of hits received specifically on those pieces.

**Agenda Item 3 – About the FJC (slide pack)**

1. By way of introduction to the FJC, Theis J and Melanie Carew talked through the slide pack.

**Agenda Item 4 – Business Plan Progress**

1. FJC went through each of the activities for updates.

**Activity 1 – Use of covert recordings in family law concerning children**

1. The guidance originates from an FJC debate held in 2019. A further delay has been as a result of Covid, however the subject of the guidance remains a critical issue.
2. A copy of the final draft has been issued to Council members. Members are asked to review and provide any comments by Monday 11 July.
3. The aim is to send the draft out to the main stake holder groups for consultation with a closing date in September. The working group will review in light of any comments and bring the guidance back to the Council in October.
4. Michael Lewkowicz from Families Need Fathers offered via the chat bar to support the consultation for Covert recordings and the Parental Alienation working group.
5. Jaime Craig added that the intention was to have a further meeting with the Family Justice Young Peoples Board (FJYPB) to ensure that the draft captures the points previously raised by the FJYPB.

**Activity 2 – Communication and dissemination of FJC work**

1. This will be covered under item 8.

**Activity 3 – Domestic abuse**

1. Rosemary Hunter explained that when the working group was originally set up, little was being done in the field of domestic abuse. This has since changed, and a lot of work is being done which has impacted the group’s ability to finalise the guidance. There is so much pending in the next few months that it hasn’t been possible to finalise in a meaningful way. The working group will continue to keep this area under continuing review, which includes responding to consultations.

 **Activity 4 – Experts in the family justice system**

1. Fiona Straw explained the objective of the group was to increase the number of experts in the family justice system. Most recently, the group is finalising the arrangements for a symposium. The symposium will take place in Birmingham on 12 October and will have a hybrid element.
2. A further aspect is to improve training for both experts coming into the courts but also training for lawyers and judges on the role and responsibilities of the experts.
3. The group is looking at streamlining payments to experts to allow them to be remunerated. Meetings have been held with commissioners and Presidents of the royal colleges to see if it can be made easier for health professionals to appear as experts as part of their NHS roles.
4. Jaime added that there are eight regional sub-groups to promote interconnectivity between experts and legal professionals. This allows both sides to discuss some of the challenges each other is facing which is then fed back to the national group.

 **Activity 6 – Death by suicide within family proceedings: awareness and support**

1. Colette Dutton confirmed that the group has met on a number of occasions. It has established that a lot of support already exists. The group has clarified that it is not intending to offer support to parents but make the most of what support is available and ensure that there is adequate signposting to those resources. The group hopes to have a draft by the autumn.
2. Jaime added that a survey has been carried out with professionals to get their perspective on this issue. The feedback confirmed that this is an issue and very few feel confident on how to respond.
3. The group will want to ensure that any guidance produced is also helpful for parents and so it will consider how it can consult with parents over the new few stages.

 **Activity 7 – Responding to allegations of alienating behaviour**

1. Jaime confirmed that interim guidance recently published is around the use of experts where there is potential conflict of interest. How experts are used in these kinds of cases will form a large part of the main guidance, for which the group aims to produce a draft for January 23.
2. The group is working around a decision-making chart. The guidance is intended to be practical to help people decide at any given point, what information is needed and what questions need to be asked.
3. Bernadette MacQueen gave reassurance that the magistrate and Legal Advisor perspective is being taken into account in this area.

 **Activity 8 – Financial remedies**

1. Peel J reported the group is currently looking at updating the guidance currently on the website for ‘Sorting out Finance on Divorce’ and ‘Guidance on Financial Needs on Divorce’. He anticipates that the guidance will be ready for the Council at the October meeting.

 **Activity 9 – Medical mediation**

1. This activity was postponed in June 21. There has been consultation with the Royal College of Paediatrics and Child Health (RCPCH) around joint working on this area, however due to resource and time limitations, the RCPCH is not currently able to help.
2. A new working group covered under agenda item 5 should overtake this workstream.

**Agenda Item 5 – New Working Groups**

 **Medical Treatment cases**

1. Theis J stated that the idea of this working group was to draw from the idea of trying to support difficult medical cases involving children to see if the FJC can produce practical advice and guidance which would be the go-to place for anyone involved in that type of case.
2. Melanie confirmed that the proposal includes the possible contribution of medical mediation which is an important part of the process.
3. The Council approved the set up of this work stream. The following members volunteered to be part of the working group: Ruth Henke, Fiona Straw and Maud Davis. Members to contact the secretariat if they wish to assist with the working group.
4. Melanie confirmed that a meeting would be set up for members. It could then discuss whether to co-opt non-FJC members with the necessary expertise to join the work stream. The working group will report back on progress at the next Council meeting.

**FJC Website Layout**

1. HHJ Karen Venables, Rosemary Hunter and Natalia Schiffrin have agreed to assist the secretariat to review the layout of the FJC website to make the information more accessible to its users. Work can begin once the website is move onto the new platform, which is expected to be sometime in July.
2. Kim Webb confirmed that the new platform will replicate the existing guidance on a webpage, where practical to do so rather than as a link to an attachment. This will allow the FJC to track page views of its guidance more efficiently.

**Agenda Item 6 – Family Justice Board (FJB)**

1. Neal Barcoe confirmed the FJB last met on the 20 June. This was the first meeting for the new minister, Lord Bellamy, who chaired alongside Will Quince, the children’s minister. The following substantive items were covered:
	1. The FJYPB reported on their voice of the child conference and national charter on domestic abuse
	2. Josh McCallister spoke about the children’s social care review, focussing mostly on the justice system and engaging families earlier as well as seeing the local family justice boards being revitalised.
	3. National panel reviewed findings and learning from the Star Hobson and Arthur Labinjo-Hugh reports
	4. Public Family Law – looking at those cases that have been in the system the longest and what could be done. DfE made suggestions on how this could be taken forward.
	5. Private Law – opportunities to strengthen mediation
2. The President reported that he had recently given evidence to the House of Lords committee looking at the operation of the Children and Families Act 2014. The FJB was discussed and the President mentioned the difficulty with the regular changing of ministerial chairs for this Board. He suggested an independent chair for the Board.

**Agenda Item 7 – Topic for annual debate (Nov/Dec 22)**

1. The debate will be held in late November/early December and consideration is being given to it being either a fully remote event or a hybrid with a smaller audience in person.
2. The following potential topics were suggested:
	* + - 1. Reunifying youth justice with family justice (Natalia Schiffrin)
				2. Gender and family justice – do we need more men involved in family justice? (Natalia Schiffrin)
				3. Does private law have as much influence and importance as public law proceedings in relation to children’s welfare – Is private law the poor relation of the family justice system? (Natasha Watson and Rosemary Hunter)
				4. Should children have automatic access to their file in private law cases as they do in public law? (Melanie Carew)
				5. Whether parents should seek permission before applying to the court. (Melanie Carew)
				6. The voice of the child – are we really listening (Jenny Kingsley – guest)
				7. Re-inventing family justice to address delays in a world where new resources are likely to remain limited (Michael Lewkowicz – guest)
				8. Domestic abuse and appropriate responses to survivors and perpetrators (Ciara Bergman – guest)
				9. Value and pitfalls of remote hearings (Jaime Craig)
3. Theis J will consider ideas suggested with the President and secretariat and will send to members prior to next meeting the tentative proposals and ask for suggestion of names of speakers. The aim is to have the final plan ready for the October meeting.

**Agenda Item 8 – Communications Strategy**

1. Thanks, to Bernadette for drafting the base article, which can be used and amended for any publications. This has now been sent to Magistrates Association magazine for publication. Members who know or have access to any other publications were encouraged to use the article as a base to promote the work of the FJC. Guests were invited to contact the secretariat if they wish to publish the article in any of their own magazines.
2. Theis J highlighted the outreach work, as recorded in paper 7 which had taken place to promote the work of the FJC since the last meeting and summarised the contents and purpose of the communications strategy in paper 6.
3. Referring to review of FJC website guidance at paper 8, Kim Webb confirmed that the paper only listed guidance, which was due to be reviewed to ascertain whether it needs updating or archiving. If members see any information on the website, which can now be archived or deleted, let the secretariat know.
4. Rosemary confirmed that a second Pensions Advisory Group (PAG) has been constituted to review the ‘Guide to Pensions on Divorce’. Rosemary will speak to Peel J about having a member of the financial remedies workstream attend PAG to share their expertise. Rosemary will continue to be involved as a member of PAG to assist with the user-friendly version.

**Agenda Item 9 – Research Update**

1. Rosemary presented her paper on recent research.
* Five of the papers deal with experiences as parents and carers before, during and after proceedings; three of those with public law, one with private law and one covering experiences of both remote and hybrid hearings.
* The papers highlight concerns and scope for improvement in various aspects in the way that family proceedings operate from the perspectives of parents.
* There is a strong domestic abuse theme. One in relation to public law in relation to women survivors of DA losing their children to care or adoption and the re-traumatisation. Three papers deal with the DA in private law.
* A couple of the papers look at issues beyond court proceedings:
	1. SafeLives project to develop training for family lawyers in their knowledge and ability to represent parties who have experience DA;
	2. the issue of people’s emotional readiness for dispute resolution.
* Systematic statistical data from Nuffield Family Justice Observatory on the ethnicity of court users in public and private law proceedings, as part of their ongoing work to understand who is coming to court.
1. The Council provided suggestions for guest presentations at future Council meetings.

**Agenda Item 10 – AOB**

1. Jaime suggested a further topic of debate or for a future guest presentation something around remote hearings and their value and pitfalls.

**Agenda Item 11 – Response to questions from public**

1. After the positive response in the number of questions received, the Council chose to concentrate the questions into six main themes with an overarching question covering each theme. The questions and responses will be published on the FJC website as an annex to these minutes.



**Monday 4 July 2022**

**Open Meeting Q&A**

**Question 1:**

**What is the Council doing to encourage more experts into the court setting?**

We are all aware that in recent years it has become increasingly difficult for the Family Justice system to find experts who are willing to give evidence in Family Court proceedings. The shortage has not only been of clinical experts but also allied health professionals and independent social workers.

In autumn 2018, The President of the Family Justice Division asked Mr Justice David Williams to convene a Working Group of legal and health professions to investigate the problem and to suggest solutions. A report on the findings and recommendations was published in November 2020 and is available on the FJC website.

22 recommendations were made and as a result, a number of sub-groups were established to take these recommendations forward;

* Training
* Commissioning
* Payments
* Court processes, sustaining and maintaining change

8 regional FJC expert witness working groups have been set up to bring together legal and health professionals to discuss, train, mentor and generally develop ideas to encourage health professionals to provide expert reports to the family courts. An expert and a member of the judiciary jointly chair each group and further details can again be found on the FJC website.

We have re-launched the mini-pupillage scheme to enable professionals thinking about being instructed as an expert, to spend a day with a Judge, sitting in court observing expert medical / psychological witnesses giving evidence. This provides them with some knowledge of the court process, and this live experience can alleviate some of the anxieties that professionals may have about giving evidence, in particular being cross-examined.

Finally, we are in the early stages of planning a joint legal/expert symposium, which will be held on 12th October at Birmingham Children’s Hospital, there will also be an option to attend virtually.

**Fiona Straw – Consultant Paediatrician**

**Questions 2**

**Is there a future for remote hearings?**

The COVID-19 public health emergency brought an increase in the use of remote hearings in the family court almost overnight, and since then we have learnt a lot about how these hearings should be conducted.  In particular, The Nuffield Family Justice Observatory has completed some very thorough research into this topic which has helped to raise the issues that need to be considered and a working group led by HHJ Farquhar produced a report on the future of remote hearings in the family court.

What all of this has shown us is that there are occasions where remote hearings, or a hybrid hearings, are suitable and occasions when they are not.  The approach of the family court remains a case by case determination, with the emphasis being upon judicial discretion with parties and their lawyers being physically present at court where an important decision may be made.

Remote hearings have, and I am sure will, play an important role where geographical constraints mean that physical court attendance is difficult.  Additionally, in suitable cases, allowing the opportunity for experts to give evidence remotely has proved to be beneficial.  An area where remote hearings have played an important role is in cases where domestic abuse is a factor.  The Family Justice Council has issued separate guidance on safety from domestic abuse and special measures in remote and hybrid hearings which is available on the FJC website at  [**https://www.judiciary.uk/wp-content/uploads/2020/11/Safety-from-Domestic-Abuse-and-Special-Measures-in-Remote-and-Hybrid-Hearings-Family-Justice-Council-guidance.pdf**](https://www.judiciary.uk/wp-content/uploads/2020/11/Safety-from-Domestic-Abuse-and-Special-Measures-in-Remote-and-Hybrid-Hearings-Family-Justice-Council-guidance.pdf).  This guidance includes a checklist of considerations for the court in determining participation directions for remote hearings including consideration of what kind of environment is necessary for the court to deal justly with the case having regard to any welfare issues involved.  Considerations to be followed during the hearing are also set out and include that the alleged victim and perpetrator should never be put in a situation where they are alone together on a telephone line or in a video conference; neither should the victim be left alone with the perpetrator and the perpetrator’s lawyer.  The emphasis on a case by case determination should not be lost, as for some victims, participation in a video conference can be invasive, (re)traumatising and endangering.

Whether to have a remote hearing, therefore forms part of the many considerations that need to be made in order to ensure a fair hearing.

**Bernadette MacQueen – Legal Advisor**

**Questions 3**

**Will the Family Justice Council be focusing on making the language of the courts and orders less adversarial in context and more conciliatory?**

The Family Justice Council welcomed the impressive report by the Family Solutions Group ‘What about me’ published in November 2020. This report looked at reframing support for families following parental separation. An important part of that report looked at the use of language and recommended a shift in language away from legal disputes towards a language of supporting parents to resolve issues together. The report concludes that changes in language need to be made to reframe language in the information and support which precedes the justice system, as well as when parents are in that system. The chair of that group, Helen Adam, gave the Bridget Lindley Memorial Lecture at the FJC Conference in March 2022 which is available on the FJC website to view. It was a powerful presentation that supported the recommendations in the report. The President of the Family Division will establish a working group to look at the issue of language in the family justice system to build on the recommendations in the report. The Family Justice Council fully supports that initiative.

**Mrs Justice Theis – High Court judge and Deputy Chair of the FJC**

**Question 4**

**How can financial remedies cases become streamlined, with more consistent and certain outcomes?**

There are two interlinked parts to this question: (i) how to achieve more consistency of outcome and (ii) how to make the process more streamlined.

As to consistency of outcome the courts are mandated by s25 of the Matrimonial Causes Act 1973 to consider all the circumstances of the case in order to achieve a fair outcome. That enables the court to arrive at a bespoke solution in each individual case. The advantage of the statutory regime is the ability to tailor an award to specific factors, in the knowledge that every case is different. The disadvantage is that the inbuilt flexibility leaves room for a reasonable range of possible outcomes, which in turn can generate a degree of uncertainty. That said, the application of the statute by the courts is now reasonably settled, guided by the three principles of sharing, needs and compensation set out by the House of Lords in **Miller v Miller; McFarlane v McFarlane [2006] UKHL** 24.

It should be noted that the cases which generate widest publicity are heard at High Court, or Court of Appeal level (and in the latter instance, they are generally appeals from a high Court Judge). These are generally cases of great wealth where a great deal of money is at stake, and often very unusual facts. It does not follow that, because such cases are litigated at great cost, more typical cases heard up and down the country by District Judges produce inconsistency of outcome. Approximately 40,000-50,000 financial remedy cases are issued each year, of which all but approximately 15% result in settlement before final hearing. It is very rare for those cases which do result in a final hearing to be appealed successfully. There is no clear data to suggest that overall, such cases are dispatched with inconsistent judicial approach. It would be of assistance to have a better understanding of how such cases are disposed of, and in that respect, encouragement is being given for more judgments below High Court level to be published. It should also be noted that all financial remedy judges receive training, are updated regularly on law and procedure by talks, conferences, specific communications, and mutual discussion, all of which assists in promoting consistency. The Financial Remedies Court was piloted in 2018 and formally established in 2021 specifically to promote greater consistency among specialist judges with the knowledge and expertise to deal with such cases.

To achieve a greater degree of consistency than is presently the case would probably require reform of the statutory provisions. The Law Commission in 2014 recommended specific provisions to render pre-nuptial agreements enforceable subject to certain safeguards. Similarly, there have been bills presented in the House of Lords by Baronesses Deech and Shackleton to establish a fixed regime for division of assets upon divorce, drawn in part from models in other jurisdictions. Unless and until steps such as these are taken, the courts will continue to be mandated to undertake the highly discretionary and fact specific s25 inquiry.

As to streamlining the process, a number of steps are under way. A new Statement of Efficient Conduct has been promulgated to promote greater efficiency of cases. Much greater use of out of court settlement (for example by mediation and early neutral evaluation) is actively promoted. Robust case management is actively pressed by judges. A project to set up a fast track procedure for cases where the assets do not exceed £250,000 net (thought to be applicable to about 25% of cases) is in hand; it would considerably shorten the current procedure, with fewer court hearings and more focused disclosure. There is a working group considering how best to gather, and analyse, data so as to better understand the nature of the cases and thereby consider adapting current procedures to meet the needs of the parties. These, and other steps, are under constant review.

**Mr Justice Peel – High Court Judge**

**Question 5**

**How has the introduction of the voucher scheme affected hearings in court, and do you believe them to be beneficial and a matter for long term consideration?**

The family mediation voucher scheme is designed to support parties who may be able to resolve their family law disputes outside of court. The current funding will last until end of March 2023.

When a person attends a Mediation Information Assessment Meeting (MIAM), they will be told about the voucher scheme, it is available where there are issues relating to child arrangements to be resolved.

If mediation is proceeded with, and the parties are eligible for the voucher, the mediator will apply for the voucher funding. All Family Mediation Council registered accredited mediators can be part of the scheme and can apply for a voucher. The parties are asked to consent to data being recorded by the Family Mediation Council. The information includes names, a copy of the bill and some basic information, ie whether matters were resolved or not. The data provided is anonymised before being used to provide information about the way in which the voucher scheme and the mediation services were used.

If there is a second application and you have already received a voucher, you will not be offered a second voucher under this scheme. You can only claim once per family/ case for a one-off contribution of up to £500 towards the mediation costs it will not cover the cost of a MIAM.

If one person in a case is eligible for legal aid, the other person can still apply for a voucher to contribute toward their mediation costs.

The scheme has provided data to show the benefits of mediation and the high percentage of parties who have managed to resolve their issues in part or in full.

**Claire Webb – Family Mediator**

The government has committed £5.4m this financial year to the mediation scheme taking the total to £8.7m. As of June 2022, there were 9,300 families who benefitted from the scheme. Preliminary analysis from the Family Mediation Council indicates about 65% of cases were either resolved or partially resolved to the extent that parties were not coming to court. Further evaluation is required for the medium to long term to establish whether people stay out of court. There is a lot of support from ministers for continuing the scheme as it is seen as a success.

**Neil Barcoe – Ministry of Justice**

**Question 6**

**What is being done to address delays in cases involving children?**

The Family Justice Council is aware of concerns about delay in proceedings concerning children and acutely conscious of the impact of delay on children themselves. While responsibility for reform of the system lies elsewhere, the Family Justice Council notes that the pandemic of 2020/21 created significant backlogs in the court which are being addressed as swiftly as possible. The Council is also aware of the work being done in courts operating in Dorset and North Wales to pilot different ways of responding to private law applications which it is hoped will improve the experience of families and children.

An amendment to section 1 of the Children Act would be a matter for Parliament.

**Melanie Carew - Cafcass**