

THE FINANCIAL REMEDIES COURT TRANSPARENCY GROUP

Minutes of the meeting held on 25 May 2022

In attendance (via MS Teams):

HHJ Stuart Farquhar (Chair) (SF)
Henrietta Boyle (Secretary) (HB)
DJ Susan Bennett (SB)
Sir Jonathan Cohen (JC)
DDJ Deborah Dinan-Hayward (DDH)
Harry Oliver QC (HO)
Caroline Park (CP)
Penelope Reed QC (PR)
Hope Williams (HW)

Apologies:

Samantha Hillas QC (SH)
HHJ Louise McCabe (LM)
Parishil Patel QC (PP)
Helen Robson (HR)
Emily Ward (EW)
Adam Wolanski QC (AW) (represented by HW)

The meeting commenced at 16.30.

A. INTRODUCTION

1. SF thanked AW in his absence for his paper on transparency in the Queen's Bench Division (QBD).

B. UPDATES

2. PP is hoping to get his paper on transparency in the Court of Protection to SF by the end of next week.
3. We have received a paper on transparency in Scottish family law proceedings from a Scottish judge, for which the FRCTG is extremely grateful.
4. There has been a judgment from Mostyn J (*XZ v YZ* [2022] EWFC 49) on reporting restriction orders since the last meeting.
5. SF has been in touch with Family Law and the Financial Remedies Journal and will have an article published on the FRCTG consultation to raise awareness of it.

6. SF will invite Lucy Reed from the Transparency Project and a member of the press to join the group.
7. CP has drafted the consultation questionnaire, which SF thanked her for.
8. There is going to be a debate between Sir James Munby and Christopher Wagstaffe QC on transparency on 22 June 2022.
9. There is now guidance from Peel J and HHJ Hess dated 13 May 2022 following *Xanthopoulos v Rakshina* [2022] EWFC 30 as to what happens if a point about privacy comes up in a case heard below High Court level.

C. THE CONSULTATION

10. SF turned to how we are going to ensure that as many people as possible engage with the consultation. The following points were made/discussed:
 - a. The consultation will be circulated to judges who deal with financial remedy cases, the FLBA, Resolution, the IAFL, the Media Lawyers Association, the Society of Editors, the News Media Association, IFLA, the CIArb, the Family Mediation Council, the Academy of Experts, the Association of Pension Lawyers, STEP and the Chancery Bar Association, as well as potentially some private client solicitors' firms and media solicitors' firms, litigation funders, and the Council of Law Reporting.
 - b. Members of the FRCTG can also try to raise awareness on Twitter etc.
 - c. Reminders will be sent out three or four weeks after the consultation period has begun.

D. ANONYMISATION

11. SF turned to anonymisation (also being dealt with by HHJ Madeleine Reardon and the anonymisation sub-group of TIG). The following points were made/discussed:
 - a. SF has now sat in on a focus group dealing with the anonymisation of judgments.
 - b. The anonymisation sub-group of TIG is looking at the Australian model, where a group within the Australian Ministry of Justice anonymises judgments rather than judges or counsel doing it.
 - c. Anonymising judgments takes a very long time, which is a problem. There are few low value cases being reported and the vast number of cases are low value.
 - d. If someone who was not involved during the hearing anonymises a judgment, they have to have clear rules about what to do. In big money cases where there are potentially hundreds of companies among the assets, anonymising the company names may not be an easy job, especially if someone was not involved with the case during the hearing and is not fully up to speed with the (often complicated) company structures.
 - e. The FRCTG will set out in its final report what the difficulties are with anonymising financial remedy cases and how it could be done, as well as the difficulties to look out for. A separate sub-team will be set up to look at that.

E. QBD

12. SF turned to transparency in the QBD. The following points were made/discussed:
- a. It is very rare for a hearing to be held in private in the QBD. There would have to be extremely exceptional circumstances.
 - b. The Chancery Division/QBD and the Family Division are like chalk and cheese, even though all deal with similarly private and confidential issues.
 - c. Obtaining information from debtors in the QBD is undertaken in public, but that is forced information in the manner of forced information in a Form E. There are some differences in that information in relation to debt is purely financial, but the Form E also requires information as to health, conduct during the marriage and inheritance prospects etc.

F. NEXT STEPS

13. SF turned to the FRCTG's next steps. The following points were made/discussed:
- a. We will aim to get the consultation up and running in a week or so, in early June.
 - b. The reality is that we will probably get quite a lot of responses early on, but will then have a quiet period.
 - c. In a month's time when we will hopefully have a decent number of responses, we will have to work out what to do. It would be sensible to have another meeting in a month to discuss what level of response we are getting, and then work out the way forward.
 - d. We will have a two month consultation period, during June and July.
14. The next meeting will be at 4.30pm on 29 June 2022.

G. AOB

15. There was no other business.
16. SF thanked everyone for attending the meeting.

The meeting ended at 17.25.