

# **THE FINANCIAL REMEDIES COURT TRANSPARENCY GROUP**

## **Minutes of the meeting held on 27 April 2022**

### **In attendance (via MS Teams):**

HHJ Stuart Farquhar (Chair) (SF)  
Henrietta Boyle (Secretary) (HB)  
Sir Jonathan Cohen (JC)  
DDJ Deborah Dinan-Hayward (DDH)  
Samantha Hillas QC (SH)  
Harry Oliver QC (HO)  
Caroline Park (CP)  
Penelope Reed QC (PR)  
Helen Robson (HR)  
Adam Wolanski QC (AW)

### **Apologies:**

DJ Susan Bennett (SB)  
HHJ Louise McCabe (LM)  
Parishil Patel QC (PP)  
Emily Ward (EW)

The meeting commenced at 16.32.

### **A. INTRODUCTION**

1. SF welcomed to the committee JC, AW and SB, and thanked them for agreeing to be involved in the Financial Remedies Court Transparency Group (FRCTG).
2. SF thanked PR and HO for their papers on transparency in the Chancery Division and the Family Court/Division respectively.

### **B. UPDATES**

3. SF has sent emails out to judges in other jurisdictions to try to obtain an overview of the position in other countries, but no replies have yet been received and SF anticipates a different approach may have to be taken.
4. SF has been in touch with Brian Farmer (BF) to see if he is willing to join the group as a representative from the press. SF is going to have a meeting with BF to discuss the matter further.

## **C. TRANSPARENCY IN THE CHANCERY DIVISION AND QUEEN'S BENCH DIVISION**

5. SF thanked PR for her paper on transparency in the Chancery Division and AW for offering to provide a paper on transparency in the Queen's Bench Division (QBD). The following points were made/discussed:
  - a. Trust, probate and Inheritance Act cases involve similarly personal information (including financial information) to that which is disclosed in financial remedy cases, and yet the Chancery Division approach to proceedings being conducted in open court is very different to the family approach.
  - b. In the QBD it is very difficult to have a hearing held in private and to have reporting restrictions made. The strong presumption is openness.

## **D. RECENT JUDGMENTS**

6. SF turned to the recent judgment of Mostyn J in *Xanthopoulos v Rakshina* [2022] EWFC 30. The following points were made/discussed:
  - a. It may be that District Judges (DJs) and Circuit Judges (CJs) will have the authority quoted to them and that hearings are thrown off course while the issue of proceedings being held in open court and judgments being anonymised is argued. Given the contrasting authorities and the differing practices of current High Court judges when it comes to anonymity and privacy, the law will remain unclear until it is clarified by the Court of Appeal, but it may take a long time for the issue to reach the Court of Appeal.
  - b. There is a meeting of DJs and CJs with Peel J in the next few weeks and it may be that something is raised then about the impact of the judgment below High Court level.
  - c. It is currently unclear what the meaning of hearings being held 'in private' means from the authorities. This is confusing and clarity is needed.
  - d. There is a possibility that parties will use the threat of having a hearing held in open court or a judgment not anonymised as a means of gaining advantage in litigation.
  - e. If the FRCTG makes recommendations on primary legislation, that may take years to be implemented. Even recommendations about changes to the FPR take time to be implemented.
  - f. Some practitioners in the group have experienced concern from clients about the issue of judgments not being anonymised or proceedings being held in open court.
  - g. Even First Appointments could take place in open court on the basis of the judgment and the issue is not confined to final hearings.
  - h. It may be that the press start to turn up to hearings and report on cases. It is particularly important that a representative from the press joins the FRCTG so that the press's view can be heard.
  - i. Notwithstanding the uncertainty in relation to the law at the moment, the FRCTG's role is to make recommendations about what should happen in the future, rather than going into the law in detail.

## **E. THE CONSULTATION**

7. SF turned to the consultation that will be held. The following points were made/discussed:

- a. In terms of getting an overview of the position in other jurisdictions from foreign practitioners who are members of the IAFL, members of the FRCTG can ask questions during the IAFL's online 'monthly chats'.
- b. It is not particularly relevant to have responses from practitioners in civil code countries (e.g. France, Germany) given that their approach to financial remedy cases is so different. The FRCTG will focus on Australia, New Zealand, Canada and Hong Kong. SF will write to practitioners in those jurisdictions if he is given suggestions of who to contact.
- c. The consultation period should be about 2 months long to give people enough time to respond. It is important that there is a good volume of responses.
- d. The FRCTG will ask several different organisations to circulate the consultation questionnaire to maximise its reach.
- e. In addition to reaching barristers, solicitors and judges it is important responses are received from the press and bodies like the Transparency Project.
- f. In terms of getting responses from professional trustees and pension organisations, the Association of Pension Lawyers and the Society of Trust and Estate Practitioners (STEP) will be contacted.
- g. Circa 3 members of the FRCTG will finalise the consultation questionnaire within the next few weeks.

## **F. NEXT STEPS**

8. The following steps will be undertaken before the next FRCTG meeting:
  - a. SF is attending a meeting with HHJ Madeline Reardon to consider how to get more DJ/CJ judgments reported and to discuss how those judgments can be anonymised given it is a lengthy process. SF is going to sit in on a study group with DJs.
  - b. AW is going to provide a paper on transparency in the QBD.
  - c. PP is going to provide a paper on transparency in the Court of Protection.
  - d. SF is going to write an article which will hopefully be published in Family Law and/or the Financial Remedies Journal to raise awareness of the consultation among practitioners.
  - e. Members of the FRCTG will publicise the consultation at the FLBA Cumberland Lodge weekend and the Resolution conference.
  
9. The next meeting of the FRCTG will be at 4.30pm on 25 May 2022.

## **G. AOB**

10. There was no other business.
11. SF thanked everyone for attending the meeting.

The meeting ended at 17.31.