

**Family Justice Council**

**Draft Minutes of the Meeting**

**Held on 23 January 2023 (11:00 to 14:00) (Hybrid meeting)**

**Member Attendees:**

**In person:**

Chair: Mrs Justice Theis [Theis J]

Sir Andrew McFarlane, President of the Family Division

Mrs Justice Morgan [Morgan J]

Jaime Craig, Child Mental Health Specialist

Karen Venables, Circuit Judge

Bernadette MacQueen, Legal Adviser

Natalia Schiffrin, Magistrate

Jenny Beck, Private Law Solicitor

Maud Davis, Public Law Solicitor

Rosemary Hunter, Academic

Melanie Carew, Cafcass

**Remote**:

Mr Justice Peel [Peel J] [attended for FJC WG update only]

Neal Barcoe, Ministry of Justice

Mavis Amonoo-Acquah, Junior Barrister

Rebecca Cobbin, HMCTS

Judith Crisp, District Judge

Vinice Cowell, Parent and Family Rep

Colette Dutton, ADCS

Matthew Pinnell, Cafcass Cymru

Amy Shaw, CJC

Fiona Straw, Consultant Paediatrician

Natasha Watson, Public Law Solicitor

Claire Webb, Family Mediator

**Secretariat:**

Bee Ezete

Sophie Gowans

Daphna Wilson

**Apologies:**

Angela Frazer-Wicks, Parent and Family Rep

Ruth Henke, Silk

NB: Neil Barcoe apologised that for only being able to attend the first part of the meeting.

**Agenda Item 1 – Welcome and Announcements**

Chair welcomed Mrs Justice Morgan to her first meeting of the Council.

Congratulations to Rosemary Hunter who has been made an Honorary KC. Her membership bio was updated on the FJC website to reflect this.

FJC Secretariat changes:

* Bee Ezete has joined the President’s private office team as Private Secretary to the President and Secretary to the Family Justice Council. Bee was previous at the Judicial College.
* Sophie Gowans has been part of the President’s team for over 2 years and now moves to the role of Deputy Secretary to the Family Justice Council.

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

Minutes were approved.

**Matters Arising:**

Update on the FJC Debate which took place on 6 December 2022:

The topic of the annual debate was ‘Should remote hearings continue to play a significant role in family cases?’. It was held in court 4, in the RCJ for the first time.

At its highest, 142 people joined on-line and 34 people attended in person.

The vote was:

Online: 82% for the motion and 18% against

In the room: 64% for the motion and 36% against

The majority were ‘for’ remote hearings continuing to play a significant role in family cases. Feedback has been positive about the event and the venue. The recording has been uploaded to the website.

It was agreed that the RCJ worked well as a venue and we would look to use Court 4 again.

One point noted was that the differences in view on the judges role in interpreting demeanour of parties was interesting. The question was raised as to whether remote hearings should be a work stream. If the FJC wanted to look at this then the President would be happy for them to do so but he was of the view it was for the Judge to decide on a case by case basis and does not propose to issue any guidance.

The Chair said it may feed into the 8th March conference and we could revisit the topic after the event.

**Agenda Item 3 – Family Justice Board (FJB)**

Neil Barcoe confirmed that the FJB met on 15 November 2022. The Board was Chaired by Lord Bellamy KC and Minister Coutinho MP. The following substantive items were covered:

* The board started with an update from the Family Justice and Young People’s Board on their ongoing programme of work.
* The Board went on to talk about governance and key performance indicators (KPIs) for the Family Justice System, such as reducing delay in the system, increasing efficiency and better supporting parents to resolve their issues outside of court. The item was focused on measuring those things and how over the course of the next year or two, we will hold ourselves to account on the progress that we expect to be making in those areas.
* Public Law: The board discussed progress on addressing the longest cases in the system. There had been a lot of work undertaken with Cafcass and Local Authorities on identifying those cases and taking steps to address them.
* Discussion on Stoke on Trent’s positive experience of refocusing on the Public Law Outline (PLO). As we are aware the President relaunched the PLO on 16 January 2023.
* Private Law: HHJ Gaynor Lloyd gave an update on North Wales’ experience of the Private Law Pathfinder Pilot, which was positive.

The President noted that the board also approved a new governance structure for different groups to meet. The new groups would start meeting from January onwards. The FJB format now included a feature topic at each meeting, which was where the update on the Pathfinder courts fed in, and it worked well.

The President reported that Lord Bellamy was prioritising Family Justice and was visiting many courts. Minister Coutinho was also very engaged and supporting the wider use of FDACs.

Maud asked whether the FJB were considering the impact of the increase in litigants in person (LiPs) on the court process. Neil said he could speak to Lord Bellamy about a potential agenda item.

The President asked Maud to provide a written document for Neil to present to Lord Bellamy. Dr Hunter, on behalf of the DA WG, asked to what extent was DA included in the FJB’s workstreams.

The next meeting of the FJB will take place on 21 February 2023

**Agenda Item 4 - Business Plan Progress**

FJC went through each of the activities for updates.

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

Natasha provided an update on the work and confirmed that the aim was to conclude in 2023.

* The consultation on the draft guidance closed on 12 December 2022. The responses were helpful.
* The Transparency Project (TP) provided a substantial response. As a result of the consultation responses the group would make slight adjustments to the guidance.
* The importance of using plain English, where possible, was emphasised. The proposal was to include an annex to the guidance aimed at Litigants in Person (LiP) summarising the key points. The guidance was not intended to become a guide on how to undertake covert recordings within the rules, it was to assist courts in what to do if covert recordings were produced.
* There was discussion as to whether a plain language version might be beneficial. Theis J pointed out that if we were to ask AdviceNow to draft a plain language LiP version there would be a cost associated with it.
* Natasha suggested that the draft guidance be shared with the Information Commissioners office (ICO), to give them an opportunity to comment on specifics before it is published. The WG did not think it would be helpful to expand the guidance to explore the technicalities of data protection law, this was better left with the ICO.
* The TP commented that apparently in some courts, judges were asking for contact handovers to be overtly recorded and then the recordings made available to the court. The group felt that this fell distinctly outside of the scope of a guidance about covert recording.

The Council agreed with the suggestions and the scope of the guidance.

It was agreed that the Working Group would produce a draft of the LiP annex. Natalia offered to review the annex as she had experience of producing plain English guides. Vinice also volunteered to review the draft annex from a parents perspective.

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

This will be discussed under item 9.

**Activity 3: Domestic Abuse**

The group met in November 2022.

* They are looking to map out the activity that is going on in the DA sphere and then see where they could usefully contribute.
* The WG may be able to assist in the area of the withdrawal of DAPS, such as how courts might manage risk without the perpetrator referral programme. They had received helpful information and guidance from Cafcass and Cafcass Cymru, Wales not having had a DAPS programme.
* Neil stated that the Ministry of Justice were reviewing the position regarding what would replace DAPS. He confirmed that there would be a meeting in February on the future of support in DA cases to cover E&W. The MoJ were also looking at potential interim arrangements.

Next meeting to take place in February 2023.

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

Fiona provided an update from the group that included:

* The WG are taking forward the recommendations of the PFD’s report.
* The National symposium in October was very successful and the group is planning to hold another symposium in October 2024.
* Expert witness committees were doing well. In March there was an event taking place in Leicester including mock cross examinations. The mini pupillage scheme for potential experts was still running and experts were being encouraged to apply.
* There had been a slight delay in meetings with the Royal College. The group was exploring with the College whether each college could have an expert witness lead. A further meeting was planned shortly.
* The group is looking at the Commissioning of services. There have been some initial meetings with officials looking at the idea of having safeguarding hubs. This would enable professionals to have peer reviewers on hand and would hopefully lead to more wanting to take up the work.
* Mr Justice Williams provided Judiciary with training on the use of experts.
* Exploring ways to simplify the payment of experts. Maud is in conversation with the children sub-committee of the Law Society. It was noted by Jenny Beck that one of the issues in E&W has been about the Legal Aid Agency certificate limit and the need for payments to go through the solicitors but something worth exploring.

The group now meets every 4 months.

**Activity 5 – Death by suicide within family proceedings: awareness and support (paper 4)**

The working group was asked by the FJC to investigate what measures and mitigation should be in place to assist those working within the Family Court to manage situations that arise where there is a threatened intent of suicide from a party. The intended audience is professionals working at court rather than parties.

Collette provided an update on the work stream:

* The WG went through what information was available.
* HMCTS already produce a 1 page guidance for their staff and the group wanted to avoid duplication. It was thought that the group could combine their short guide with that provided by HMCTS but that is no longer possible as HMCTS was slightly concerned that it might confuse their staff.
* The group are therefore going to take out the HMCTS aspects and make it FJC only guidance.
* Once complete the guidance will be publicised amongst practitioners.
* HMCTS are happy for us to include the links to their guidance.
* It was commented that the word ‘customer’ didn’t seem quite right. This had been used to match the HMCTS guide but now that the two would be separate the language could be reviewed.
* HMCTS staff would be provided with the HMCTS guide. Rebecca said she would be happy to take any suggested changes to the service lead.
* Rebecca said HMCTS would most likely be able to facilitate posters/leaflets of the FJC guidance in court spaces for practitioners to access.
* It was asked whether HMCTS would be updating their staff work cards to reflect that there would be another piece of guidance available to practitioners. Rebecca said that this had been recommended to the relevant HMCTS team.

The Chair agreed that the WG can proceed with the slight amendments and the guidance was signed off in principle.

**Activity 6 – Responding to allegations of alienating behaviour**

Judge Venables provided a short update:

* The Working Group are drafting a route map.
* They are waiting on publication of the President’s judgement in order to finalise the guidance.

Final draft of the guidance will hopefully be presented at the April meeting.

**Activity 7 – Financial Remedies**

Peel J provided a short update.

* The WG continued to review and update the guidance on ‘Sorting out Finances on Divorce’ and ‘Guidance on Financial Needs on Divorce’.
* The work was nearly completed, there would be a further meeting in February to discuss the amendments.
* Broken links on the website have been fixed.

The WG aim to circulate the final drafts of the guidance before the April FJC meeting.

**Activity 8 – Medical Treatment cases**

The intention was for the guidance to be procedural rather than how you treat patients.

Melanie provided an update on the work of the group:

* The group shared their final draft guidance with the Council in paper 3. The WG would welcome comments from the Council in the next two weeks before the document is sent to stakeholders for consultation.
* In the guidance there is reference to a practice note, this has now been amended and signed off by Cafcass and the Official Solicitor, so that will be included in the final draft. The practice note relates to contacting Cafcass out of hours.

Morgan J volunteered to join the group.

The Chair said that the FJC secretariat would consider which stakeholders needed to be consulted. The document would be sent out for consultation in February/March 2023 and then most likely come back to the Council for the July meeting.

**Agenda Item 5: FJC Governance**

The Governance document had been circulated in advance as paper 5. The Chair asked if there were any comments.

Jaime asked whether it would be appropriate to add to page 2, para 2, that the President discuss with the FJC Exec whether a work stream fits within the remit of the FJC or the PFD Office.

The Chair said that this could make it too formulaic. It was decided that it would be for the Chair to update the FJC exec on any new judicial work streams that run alongside the FJC and touch upon the same topics as one of the working groups.

**Agenda Item 6: Discuss Work Stream - Disclosure**

Judge Venables provided an update based on paper 10 on the work of the scoping group, with the initial question being; whether the FJC wanted to limit the scope to guidance on what already existed, or does the FJC want the group to look at the challenges to disclosure, which may require additional resource.

It was agreed that it was not for the FJC to go beyond what was currently possible. This topic was raised with the FPRC many years ago and it was a very complex area of law.

Melanie said she was pleased to see that the Local Authority and Cafcass guidance were similar. It was clear that the amount of information that children could obtain regarding cases that they are not a party to was very limited.

The Chair said they could see some benefit in this group bringing all pieces of guidance into one place.

Jaime said that it would be helpful to set out for children what was/was not possible.

Judge Venables said they thought it might be useful to collate what was currently the position and provide a short guide as to how to apply.

It was suggested that the group consult the FJYPB on this matter and the President agreed.

Melanie said that Cafcass were about to launch a piece of work that had been done in partnership with the FJYPB.

The Chair said that the terms of reference for the group going forward would be to draft guidance that brings together the processes that currently exist rather than looking at what should/could be there.

WG name to be Disclosure to Children and Young People.

The members of the scoping group to continue and be joined by Vinice and Natalia.

**Agenda Item 7 – Events – FJC Conference 2023**

The Chair thanked Judge Venables for all her work on arranging the conference.

Conference on 8 March 2023

* Dr Sheena Webb (clinical Psychologist) is giving the Bridget Lindley Lecture. She is a former clinical director of London FDAC. Her objective for the day is to get us talking about how we improve systems. Dr Webb to start with an overview of how trauma impacts on all parts of Family Justice System.
* There will be a talk from a social work team recommended from Collette. Their title is; Delivering social work from the trauma informed lens. May include a short recording from parents who have given permission.
* There will be a talk from Pragna Patel about the additional challenges for those who come to the FJS from black and minority groups.
* Clare Mason, an academic, will talk about the trauma of removals at birth.
* There will be a session from the FJYPB and at least one parent speaker.

Breakout discussions will focus on what four different areas of the system currently do, how they are addressing trauma, what could be improved to work in a more trauma informed way. The four groups will be Social Work, Practitioners, Judiciary and Experts.

The Chair noted that we learned from Bristol conference that breakout discussions need topics on which there are differing views to allow for a full discussion.

We want a broad range of stakeholders to attend the conference. Attendees will be assigned to groups to ensure we have varied groups. We will ensure that there are either parents or FJYPB members in each group.

There was a discussion about what types of family law and trauma will be covered. The aim is for both public law and private law to be covered and the impact of trauma on all involved. The organising group were conscious that with a 1 day event all elements could not be covered but the aim was to cover a broad experience of the system.

President agreed that it ought to be kept broad. It would be helpful if Dr Webb covered both public and private law in her opening lecture.

The group had discussed ways to ensure that private law was covered in the talks.

The Chair asked whether it would be helpful for FJC members to suggest any possible speakers that have more focus on Private Law. Judge Venables agreed. Jenny Beck and Rosemary mentioned a speaker and would follow up with contact details.

**Agenda Item 8 - House of Lords Committee on the Children and Families Act 2014 – MoJ proposed response includes a recommendation to the FJC to review the guidance setting out the approach taken to judges meeting with children.**

President agrees that the guidance should be reviewed and that the voice of the child should be noted at the beginning of the case.

It was agreed that a new WG would be set up to review the guidance and the recommendations of the Committee. Members to include: Maud, Natalia, Rosemary, Jaime, Vinice, Judith, Natasha and Melanie.

The Chair said that the purpose of the WG was to consider the recommendations on para 151 of the report, Initial hearing recommendation and the review of the guidance. It might be beneficial for them to view the select committee evidence sessions on the topic.

**Agenda Item 9 - Communications strategy (Papers 7 and 8)**

* 1. Comms Activity feedback
  2. Website analytics

1. Comms activity

* The most recent talk was given by the President at the FLBA conference in January.
* The Chair noted that whenever an FJC vacancy is advertised, we get a great response and quality applications.
* The Chair encouraged all to familiarise themselves with the PowerPoint and take every opportunity to speak about the Council.

1. Website

* Vinice said that the data we have does not show how many people are reading and downloading our guidance as the individual PDFs are not being tracked. There is a way to track the PDFs, with a tracking code or tag manager.
* Natalia said it would be helpful to see how many are engaging with the guidance documents.
* It was noted that the CJC gets similar engagements data as was shared at the meeting.
* President asked whether FJC guidance sit anywhere else online? Is it reproduced anywhere? And if we do not know could we explore where else they can be found.
* It was noted that the guidance referred to by the House of Lords committee, Guidance on Judges meeting children, was not on the FJC website.
* It was agreed that the Comms working group (activity 2) would be restarted and Vinice, Melanie and Mavis would join.

**Agenda Item 10 – Research Update**

Rosemary went through her paper summarising the pieces of research that included:

**Public law:**

* One on Mothers in recurrent care proceedings (NFJO)
* Another called 10,000 voices: The views of children in care on their well-being (The Rees Centre, University of Oxford and Coram Voice, October 2022)

**Private Law:**

* Separating families: Experiences of separation and support (NFJO, November 2022) <https://www.nuffieldfjo.org.uk/resource/separating-families-experiences-of-separation-and-support> (Jon Symonds et al.)
* Dislocated lives: The experience of women survivors of family and domestic violence after being “Hagued” (Gina Masterton et al) (2022) 44(3) Journal of Social Welfare and Family Law 369. A small-scale qualitative study of the experiences of 10 women who had been subject to a return order under the Hague Convention after fleeing domestic abuse perpetrated by their former partner.

**One LIP study:**

* Tatiana Grieshofer, ‘Lay advisers in family law settings: The role and quality of advice provided on social media’ (2022) 31(6) Social and Legal Studies 941.

Rosemary recommend that the authors of the Separating families research be invited to present to the Council.

The Chair agreed with the FJC Exec to consider the suggestion of inviting John Symonds et al to a future meeting of the Council.

**Agenda Item 11 - AOB:**

**PAUSE report: ‘**[**Set up to fail**](https://www.pause.org.uk/wp-content/uploads/2022/07/Set-Up-to-Fail-July-2022.pdf)**’ on expert witness assessments.**

Its main recommendations are:

• We recommend that an additional statement is added to Practice Direction 25B, directing expert witnesses to highlight in their report what treatments are realistic for women to access.

• Create clear rules on sharing reports or relevant sections of reports with other professionals following care proceedings.

• Establish local multi-agency panels to review the support needs of parents after care proceedings have concluded. These post-proceedings panels would be responsible for assessing both the recommendations from the expert witness reports and the local mental health support available for parents. These panels could be modelled on MARAC.

• Carry out wider research to assess expert witness reports, with the aim of learning what they tell us about the mental health needs of women who’ve experienced the removal of children from their care, and the support services they need.

The Chair proposed that the report be referred to the Experts WG to be reviewed. The President agreed.

**Agenda Item 12: Presentation**

There was a joint guest presentation from Abigail Millings and Shannon Hirst on

‘Emotional adaptation to relationship dissolution in parents and non-parents: A new conceptual model and measure’ and ‘Emotional Readiness’

**Date of the Next Council meeting is Tuesday 4 April 2023.**