



Family Justice Council Meeting

Tuesday 4 April 2023, 11.00 – 14.00 (Hybrid)

FINAL MINUTES

Member Attendees:

In person:

Sir Andrew McFarlane, President of the Family Division
Mrs Justice Morgan [Morgan J]
Judith Crisp, District Judge (DJ Crisp)
Jenny Beck, Private Law Solicitor
Melanie Carew, Cafcass
Maud Davis, Public Law Solicitor
Angela Frazer-Wicks, Parent and Family Rep
Bernadette MacQueen, Legal Adviser
Natalia Schiffrin, Magistrate

Remote:

Chair: Mr Justice Keehan
Mr Justice Peel [Peel J] [attended for FJC WG update only]
Mavis Amonoo-Acquah, Junior Barrister
Rebecca Cobbin, HMCTS
Vinice Cowell, Parent and Family Rep
Jacqui Frisby, Ministry of Justice
Ruth Henke KC, Silk
Rosemary Hunter, Academic
Lauren Kocan, DfE
Amy Shaw, CJC
Fiona Straw, Consultant Paediatrician
Kate Thomas, Cafcass Cymru
Natasha Watson, Public Law Solicitor
Claire Webb, Family Mediator

Secretariat:

Bee Ezete
Sophie Gowans
Daphna Wilson

Apologies:

Dr Jaime Craig, Child Mental Health Specialist
Colette Dutton, ADCS
Karen Venables, Circuit Judge

1. Apologies and announcements

2. Received apologies from Dr Jaime Craig, HHJ Karen Venables and Collette Dutton.
3. Fiona Straw sends apologies that she can only join at 1pm online as she has a clinic.
4. Neal Barcoe sends his apologies he is unable attend and is sending Jacqui Frisby (MoJ) as his substitute to give his FJB update, she will attend online.

Announcements

5. This is the last full Council meeting for DJ Crisp as a formal Member of the Council.
6. The Chair and President gave their thanks to DJ Crisp. Continue on financial remedies.
7. FJC will be recruiting four roles on the Council in the next few months: Junior Barrister, Mediator, Child Mental Health Specialist and District Judge.

2. Minutes of last meeting, actions and matters arising

8. The previous minutes from the January meeting were approved by the Council.

Matters Arising:

9. The FJC Conference took place on 8 March and was very successful. The topic was on Trauma in the Family Justice System. It was well attended, with around 85 attending in-person. We had an average of 88 attend the Bridget Lindley lecture online, with high point of 107.
10. Many thanks to Mrs Justice Theis and the organising group led by HHJ Venables. Thanks to all FJC members that volunteered as facilitators or other tasks: Dr Jaime Craig, Natalia Schiffrin, HHJ Venables, Angela Frazer-Wicks and Melanie Carew.
11. All feedback received was very positive. The President said that the theme of trauma was a well-chosen topic and the room was energised with discussion. The President thanked the FJC Secretariat and the wider team for their work on the event.
12. Angela Frazer-Wicks shared that the feedback from Bridget's family was very positive, they said it was a perfect tribute.

3. Business Plan progress

13. The Council went through each of the activities for updates

Activity 1: Covert Recording

14. The guidance is nearly ready to be published.
15. The group had considered all consultation responses and comments from the Members. The feedback led to a plain English appendix being added for the benefit of litigants in person (LiPs), Appendix 5.

16. The guidance to now be submitted to the Information Commissioners Office for them to review the technical description of data protection.
17. Natalia suggested a line be added to Appendix 5 that this guidance only relates to covert recordings outside the court and that recordings inside the courtroom are never permitted. Natasha agreed and would send an amended version to the Secretariat.
18. FJC Members were asked to send any further comments to Natasha in the next week.

Activity 2: Comms – dealt with at agenda item 6.

Activity 3: Domestic Abuse – No paper

19. The FJC working group asked whether the President's working group, on reviewing the approach to Family Law Act cases, would consult on any guidance to be produced. It was confirmed that the intention was for a consultation to take place before final guidance was produced.
20. The topic of Qualified Legal Representatives (QLRs) had been discussed at the group's latest meeting, questioning how the new system is working in operation. They also asked whether the MoJ were collecting data on the use of QLRs.
21. DJ Crisp said that anecdotally from speaking to fellow judges there appeared to be a small percentage of cases requiring QLRs. The President was surprised that was the case, given the type of cases that would require use of QLR under the new legislation.
22. Ruth Henke KC said that she was one of the trainers rolling out the FLBA course to barristers. The President noted that the MoJ had originally asked the Law Society and FLBA to both undertake training but there was little interest amongst solicitors.
23. There was mention of the low fees and the lack of travel expenses being payable being a deterrent for practitioners. It was noted that it is not for the FJC to campaign for higher fees. It would be for the FLBA and others to push for the MoJ to review the fees if needed.
24. The Chair noted that the FLBA had set up a fees committee on QLRs.

Activity 4: Experts – no paper

25. No substantive update

Activity 5: Death by Suicide

26. The final version of the guidance aimed at practitioners was circulated to the Council Members for consideration.
27. Natalia had provided written comments for the Working Group to consider. The comments were reviewed by the group in the break and the guidance was finalised and signed off by the Council.

Activity 6: Responding to allegations of alienating behaviour

28. Maud and Jaime met with British Psychological Society on 30 March to discuss updates to the joint guidance on psychological experts following the President's judgement in Re C. The wording is being checked by both the BPS and Maud for the FJC. The document should be in final draft shortly for the Chair to view.

29. The aim is to discuss the final draft of the alienating behaviour guidance in July. Once the final draft is approved by the Council it will be sent out for stakeholder consultation.

Activity 7: Financial Remedies

30. Two pieces of guidance have been updated and circulated to the Council in near to final version.
31. Guidance 1: Guidance on “Financial Needs” on Divorce – led by Philip Marshall KC, aimed at practitioners.
32. Guidance 2: Sorting out Finances on Divorce – led by HH Philip Waller, aimed at litigants in person.
33. Peel J attended to provide an update from the group. He gave huge thanks to both HH Philip Waller and Philip Marshall KC. Peel J will provide the draft wording for the Presidential forewords for the President to consider.
34. Peel J said that HH Philip Waller had been in contact with Advice Now. Advice Now intend to update their financial remedies guides annually and asked if Philip would be willing to assist them on behalf of the FJC. Philip would be taking this action through the Finance sub-group of the FJC. It was agreed that this liaison could proceed as long as the FJC finance working group is kept informed on any proposed changes.
35. FJC approved the two pieces of revised guidance in principle, subject to the updated forewords and correct links being added.

Activity 8: Medical Treatment

36. Final draft presented to the Council for in principle sign off subject to comments from stakeholders.
37. The stakeholders consulted were Medical Mediation Foundation, Nuffield Bio Ethics and Court of Protection specialist Victoria Butler Cole KC.
38. Comments had been provided from Nuffield. Nuffield were undertaking a project on disagreements in the care of critically ill children. They asked whether the FJC would consider delaying publication until their review was completed. The Chair asked Melanie to find out Nuffield’s timeline. It was noted that the FJC document was a procedural guide.
39. Helpful comments had also been received from Victoria Butler Cole KC which had been incorporated, the Working Group sent their thanks.
40. The Council approved the guidance as drafted.

Activity 9: Disclosure to Children and Young People

41. It was noted that at the January FJC meeting that the following scope was agreed:
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.
42. At the FJC Exec in March it was raised whether the scope could be wider.

43. Melanie said the WG could only really look at what the law is currently. Cafcass had just issued a piece of work on how to give children access to the info they hold. Guidance is to look at what currently exists.
44. Only if the FJB proposed any policy changes in this area could the FJC look at this as a wider issue. The President said that the FJB was not likely to raise this point and refer it to the FJC, as it focuses more on operation of the system. The MoJ representative said that it could be something included in one of the new policy sub-groups of the FJB.
45. The Council agreed that terms of reference are limited to what currently exists and then if there was a policy change this could be revisited.

Activity 10: Reviewing the FJC guidance on setting out the approach taken to Judges meeting with children

46. The Council agreed the draft business plan wording, the objective of the group being:
 47. *To review the guidance to see whether any updates are needed. The aim of the guidance was to encourage Judges to enable children to feel more involved and connected with proceedings in which important decisions are made in their lives and to give them an opportunity to satisfy themselves that the Judge has understood their wishes and feelings and to understand the nature of the Judge's task.*
 48. *The review is taking place in light of the recommendation made by the post-legislative scrutiny Report from the House of Lords Select Committee on the Children and Families Act 2014, published on 6 December 2022.*
49. The membership of the group was agreed, Chair to be confirmed. It was agreed that a CJ would be approached to be co-opted on to the group.
50. The group aim to have their first meeting at in early May. DJ Crisp to continue on the group until a new DJ joins the group.

4. Family Justice Board

51. The FJB last met on 27 March 2023.
52. New sub-groups have been agreed. Policy has been separated from scrutiny of data and performance. There will be a new system improvement unit inside the MoJ.
53. New KPIs have been agreed on levels of outstanding cases and timeliness of cases.
54. The MoJ have launched their consultation on early resolution in Private Law cases. Open until 15 June 2023. Encouraged everyone to respond. The FJC would produce a response as a collective.
55. DfE colleagues gave an update on their work streams, including an initiative to address the longest delays in public law cases and a pilot to support earlier information exchange between the Cafcass Officer and the Local Authority Social Worker.
56. The President commented that it had been a productive FJB meeting.

5. Events: Annual Debate 2023

57. There was discussion on possible topics/questions for the debate at the end of the year.
58. One topic idea was on a trauma informed court approach. For instance, we are trying to move to a less adversarial approach, how to do we level the playing field.
59. The topic was positively received by the Council and would follow on well from this year's conference.
60. It was suggested that we could compare adversarial and inquisitorial systems.
61. It was said that there would need to be clear for/against sides to the question posed in order for the debate to work well and that may be a little difficult with the topic of trauma.
62. It was suggested that there was also vicarious trauma for the lawyers and judges dealing with the cases. Professionals can be case hardened to the trauma they see day to day. There could be an against side emphasising the need to keep it out of court as the priority.
63. The Chair noted that court itself can also add to the trauma.
64. It was commented that the President's Public Law Working Group was looking at learning the lessons from problem solving courts such as FDAC, with a view to finding out how to learn from the approach in FDAC to not add to the trauma through the court process.
65. Questions suggested:
 - 'Do we underestimate the impact of trauma in the Family Justice System?'
 - 'Is it ever possible to achieve a level playing field in an adversarial system when there has been trauma?'
66. FJC agreed that trauma in the family justice system would be a good topic.
67. It was agreed that the event will be hybrid and the venue would be in London.
68. The FJC agreed that due to the logistics of the event the debate would remain in London but the FJC conference would continue to rotate between London and other areas of the country.

6. Communications strategy

Comms Activity feedback

69. Quite a few Members have shared the work of FJC at different events. The Chair spoke at a conference in Jersey about the FJC. The Chair will be having a meeting with Jersey Cafcass, lead Judge and officials to discuss the operation of the FJC as they are interested in setting up their own.
70. Natalia provided an update on the Comms working group. Vinice and Sophie are going to liaise with the Judicial Office comms team to see if we can embed coding in our guidance to track how many times it is viewed, even when hosted on other sites.
71. The data shows an increase in visits to the website of over 500 from 2022 to 2023. The Council may want to consider what numbers/engagement we are aiming for and what would be considered 'good'.

72. It was confirmed that the FJC are unable to have its own Twitter account but they are able to use the Judicial Office Twitter account to promote events, recruitment and share links to guidance etc. 7000 people looked at the tweet on the FJC Bridget Lindley Lecture.

73. The group will also review the content on the website over the summer and will create a report for the executive to consider.

74. The Bridget Lindley Lecture would go live on the website in the next two days.

7. Research Update

75. No points raised.

8. MoJ Consultation Paper 'Supporting earlier resolution of private law family arrangements'

76. The President said for Private Law cases, where there is no safeguarding concern, we know that not coming to court is the best option and there needs to be more support for the pre-court space.

77. This has been made a priority by the MoJ and has been championed by the Deputy Prime Minister, Dominic Raab, leading to this consultation. This is our principle opportunity to engage with this topic and suggest any ideas you have thought of to improve the pre-court space.

78. It was agreed that the FJC would respond as a collective. The Chair sought volunteers to take part in the drafting group. Ruth Henke KC agreed to Chair the group. Working Group members to include; Jenny, Claire, Vinice, Maud with support from the FJC secretariat.

79. Deadline is the 15 June 2023.

9. Any other business:

Correspondence

80. Several of the group had received the same correspondence from an individual. The MoJ representative shared that their response to date had been that this is something that the government was considering and that it's being considered under the formal family governance structure and arrangements. It was hoped that they would submit a response to the consultation as the best route for their proposals rather than individual responses.

Neurodiversity

81. Jenny said that this was topic with increasing prominence. The NHS has now made it compulsory training and wondered if this could be a new work stream, looking at training across the system alongside the special measures available. The Council was very supportive of setting up a group on this topic. Vinice volunteered to be part of such a group as she runs a group for Essex County Council on neurodivergence in the workplace.

82. The Council agreed to make this a new Working Group, with the terms of reference being drafted by the group and brought back to the Council for consideration.

83. Members volunteered to take part: Angela, Jenny, Vinice, Kate, Maud and the new DJ.

10. Guest presentation

84. There was a presentation from JUSTICE on their report: "Improving Access to Justice for Separating Families". [Improving Access to Justice for Separating Families - JUSTICE](#)

Date of the Next Council meeting is Monday 10th July 2023