



## **Family Justice Council Meeting**

**Monday 10 July 2023**

Annual Open Meeting (remote)

Member Attendees:

Chair: Mr Justice Keehan  
Sir Andrew McFarlane, President of the Family Division  
Mrs Justice Morgan [Morgan J]  
HHJ Karen Venables, Circuit Judge  
Jenny Beck, Private Law Solicitor  
Rebecca Cobbin, HMCTS  
Vinice Cowell, Parent and Family Rep  
Maud Davis, Public Law Solicitor  
Angela Frazer-Wicks, Parent and Family Rep  
Ruth Henke KC, Silk  
Bernadette MacQueen, Legal Adviser  
Natalia Schiffrin, Magistrate  
Amy Shaw, CJC  
Luke Taylor, MoJ  
Barry Tilzey, Cafcass  
Kate Thomas, Cafcass Cymru  
Natasha Watson, Public Law Solicitor

### **Secretariat:**

Bee Ezete  
Sophie Gowans  
Daphna Wilson

### **Apologies:**

Mavis Amonoo-Acquah, Junior Barrister  
Dr Jaime Craig, Child Mental Health Specialist  
Colette Dutton, ADCS  
Rosemary Hunter, Academic  
Fiona Straw, Consultant Paediatrician  
Claire Webb, Family Mediator

### **Agenda item 1: Apologies and announcements**

1. Keehan J welcomed the guests to the Council's annual open meeting and explained the housekeeping rules. He thanked everyone who had submitted a question for the Council and explained that due to the number received five questions had been selected, which would cover the general themes of topics raised.

2. Apologies were received from Dr Jaime Craig, Mavis Amonoo-Acquah, Colette Dutton, Rosemary Hunter, Claire Webb and Fiona Straw.

#### Announcements

3. The Chair thanked those members whose time on the Council was coming to conclusion; Melanie Carew (near 9 years), Dr Jaime Craig (7 years) and Mavis Amonoo-Acquah (3 years).
4. The Chair thanked them all for their contributions to the Council, noting that we are particularly grateful to Melanie and Jaime for their long service and considerable contributions to many work streams.
5. The Chair welcomed the new representative for Cafcass, Barry Tilzey, and Luke Taylor who replaces Neil Barcoe as the MoJ representative to provide an update on the work of the Family Justice Board.

#### **Agenda item 2: Minutes of last meeting and matters arising**

6. Minutes of the last meeting were approved by the Council.
7. Most actions have either been completed or are contained within the agenda.

#### Matters Arising

8. We are in the process of recruiting four new members to the Council: Child Mental Health Specialist, Mediator, Junior Barrister and District Judge.

#### **Agenda Item 3: About the FJC**

9. The Chair gave a presentation on the work and role of the Family Justice Council.

#### **Agenda Item 4: Business Plan Progress**

##### Activity 1: Covert recordings working group

10. The guidance is in final draft form. The Information Commissioner's Office (ICO) was contacted to review the sections on data protection. The Council received feedback from the ICO on 6 July. The feedback has been reviewed by the Chair of the Working Group, Natasha Watson. Natasha shared that she considered that none of the comments from the ICO undermined the guidance but some of their suggestions would add weight. The suggestions from the ICO would need to be transformed into plain English as it is currently in quite specialist technical language.
11. Natasha proposed to draft a data protection appendix based on the comments provided. She will send the Council the final version over the summer for approval by email. The Chair thanked Natasha.

##### Activity 2: Comms and Website Group

12. This is dealt with at agenda item 8.

##### Activity 3: Domestic Abuse

13. The Working Group are working on mapping out the landscape of Domestic Abuse activity (research, policies, provisions etc.) in the Family Justice System, the paper was shared with the members. The Council were asked to consider whether the DA activity map should be maintained for internal purposes or published. If it was to be published it would need to be agreed how often it was updated.
14. Jenny thought there were pros a con of publishing. It was a useful one stop shop for guidance, legislation etc. that would be enhanced by hyperlinks being added to the document. Domestic Abuse was an ever changing landscape and any published document would need to be kept up to date to be relevant. She said that Dr Rosemary Hunter had done some great work to pull this together but was conscious of the ongoing resource needed to keep it updated.
15. The Chair agreed that it would be enhanced by having hyperlinks added. He suggested that the document should then be presented in final form to the next Council meeting for approval and then be updated every 6 months.
16. The Council agreed that once in final form the activity map will be added to the website and then updated every 3-6 months.

#### Activity 4: Experts working group

17. They are working on several issues/ areas of interest
  - Training of experts,
  - Commissioning work with the DfE, NHS England, Welsh assembly
  - Payment of Experts
  - Symposium planning for event in 2024
  - Various regional events planned for this year
18. The working group are planning for another Experts Symposium in 2024 which will be held in either Cardiff or Manchester.

#### Activity 5: Death by suicide

19. The final document was approved at the previous meeting and is in the process of being formatted for publication.
20. It was agreed at the Exec that the title of the document would be changed to *At Risk of Suicide: Information for professionals working within the court system.*
21. The aim to publish in July.

#### Activity 6: Alienating Behaviours

22. The Working Group prepared the final draft guidance which has now been approved by Council to go out for public consultation this summer.
23. The guidance will be in four documents:
  - i. Flowchart
  - ii. Case management guidance
  - iii. Welfare guidance
  - iv. Experts

24. Once the consultation closes, the responses received will be considered by the Working Group and then any proposed revisions will be presented to the Family Justice Council for consideration.

#### Activity 7: Financial needs working group

25. The Working Group has updated two key pieces of FJC Guidance:
- Guidance 1: Guidance on “Financial Needs” on Divorce, aimed at practitioners.
  - Guidance 2: Sorting out Finances on Divorce, aimed at litigants in person.
26. Both documents have been completed and agreed in principle by the Council, the Presidential forewords have been approved and the secretariat is formatting the guidance and checking the hyperlinks etc. The Council aim to publish the two pieces of guidance shortly.

#### Activity 8: Medical Treatment

27. The draft of the Guidance has been approved by the FJC, following consultation with Victoria Butler-Cole KC, Medical Mediation Foundation and Nuffield.
28. The FJC secretariat are formatting the document and it will be published this summer.

#### Activity 9: Disclosure to Children and Young people

29. The group have been preparing flowcharts to give an overview of the routes for children and young people to be able to request disclosure. The draft flowcharts were shared with the Council for comment.
30. Judge Venables gave the background on why this piece of work was commissioned. It came after Knowles J suggested that children/young people wanted to know how to access documents from cases that had been about them. The FJC agreed to look at what routes were currently available and draft guidance. It was decided that the remit of the group would be limited in scope to what is currently possible under the law.
31. Judge Venables thanked Vinice for all her work putting the documents drafted into flowchart form.
32. The Council discussed the documents. It was agreed that a Key would help someone navigate the documents. It was highlighted that it would be good to include any process for appeal or complaint and to explain how the two maps fit together.
33. Vinice explained that Map A was just Local Authority involvement, where as Map B was for cases where there had been both Local Authority and Cafcass involvement.
34. Natasha thought the process map was really helpful. She was conscious of the consequences of a child receiving disclosure of documents and that could be quite overwhelming or disturbing. The agency that grants any disclosure would need to think about how they help that person understand the documents. For Local Authorities the social worker sits with the child and goes through the information.

35. It was suggested that a footnote be added to the flowcharts highlighting the need for the young person to be supported and refer them to potential support, subject to resources available.
36. Jenny asked whether the flowcharts could be made into an infographic with colour to make it more visually appealing to young people.

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

37. The Chair shared that the FJC were looking to review the guidance on Judges meeting with children in due course but were waiting on a potential review of policy regarding the first recommendation from the House of Lords Select Committee, as policy changes are outside the remit of the FJC.
38. The first recommendation was: *in order to formalize the voice of the child in proceedings, initial hearings should address the issue of how the voice of the child will be heard during the case.* Once this policy has been reviewed the FJC will undertake a review of the guidance.

**Agenda Item 5: New Working groups:**

- Neurodiversity and the Family Justice System

39. The Council reviewed the draft Terms of Reference provided by the Co-Chairs.
40. Natalia asked whether the reference to “users” referred to court users or all people who are part of the Family Justice System. She also suggested consolidating the references to training and reasonable adjustments.
41. Jenny thanked Natalia for the observations and agreed that we should pull the potential reasonable adjustments together. In terms of the scope of the group, we hope that some of the observations about good practice would apply more widely to the Family Justice System than to the court itself. She would change “users” to say “all users” of the Family Justice System. The Council agreed.

**Agenda item 6: Family Justice Board**

42. Luke Taylor (MoJ) provided an overview of the function of the Family Justice Board (FJB). The Board is the primary forum for setting direction for the Family Justice System (FJS) and overseeing performance. It is chaired by MoJ and DfE Ministers, currently Lord Bellamy and Claire Coutinho, and includes senior representatives from across the system including the President, CEO of Cafcass, Association Directors of Childrens Service, CEO of HMCTS and other agencies.
43. The Board is focused on a collaborative approach to improve timeliness and outcomes. As part of this the Board revised the governance structures to have streamlined sub-groups, including an official level group designed to make better use of data across the system. New KPIs had been agreed regarding tracking the performance of the system.
44. The Board last met at the end of June, to primarily monitor and review the cross system plan to draw together all schemes across the system to reduce delay. The Board was working to try to quantify the impact of these schemes on the FJS.

45. In terms of the KPIs, they began to see fewer children and cases in the system compared to baseline data from October 2022. There was a slight reduction in duration of cases in Public Law, following the refocusing on the PLO. There had been a slight increase in duration of the cases for Private Law. The Board was focused on how to improve the connection between national FJB and local FJBs and to try to improve the visibility of the data at a local and national level.
46. The President added that, although it is often talked about as the Family Justice System, the is no joined up system. A court case, particularly public law, would come through the court system by way of cooperation between a number of agencies, HMCTS, Social Workers, Cafcass, judiciary, practitioners, medical experts, police. It was necessary for there to be a coming together of all the key players to discuss how the non-joined up system is working. This was the aim of the FJB.
47. Historically the FJB had not been as effective at achieving this aim as had been hoped. Covid brought together all the agencies that make up the FJS in a new way. Senior leaders met daily in the early stages of covid and have continued regular contact. There was now a good understanding and cooperative relationships. The FJB now sits above a more effective and agile subcommittee structure and the key stakeholders have strong working relationships.
48. The work of FJB is complemented by the work of this group, the FJC, who deal with the substance of how things operate. The President hoped that this additional information assisted those observing.
49. Bernadette commended the work that was being done to engage more with the Local FJBs. She noted that many on this call would be very much involved in Local FJBs and wanted to call out the very good work done. It would be useful to publicise the positive work of the LFJBs in a more collective way, maybe through the FJB.
50. Keehan J agreed that many Local FJBs were very active and effective but some were not. It was important that best practice be shared.
51. Angela asked Luke about the involvement of people with lived experience on the FJB and LFJBs. She gave an example of someone making an excellent contribution to an LFJB. She was aware that FJYPB were involved in the FJB but asked about how the wider experience could be represented.
52. Luke was not sure whether the FJB has had direct representation from service users but would look into exploring that, particularly to feed into the officials subgroup.
53. Keehan J noted that the Public Law Working Group's new work stream, Care Proceedings Reforms Group, had benefited from directly involving those with lived experience including young people, parents, carers and guardians to help inform the drafting of guidance.
54. Natasha shared that she had previously chaired Sussex Local FJB. She suggested that the more active LFJBs could be approached to mentor others. She acknowledged that it takes a lot of work to make an LFJB effective. A good LFJB would have active sub-groups including those with lived experience. It would be great to share best practice.
55. The Chair suggested that Luke takes back Natasha's suggestion for active LFJBs to mentor or support those that are less active. Luke agreed.

56. The President asked about the national LFJB Conference that had to be cancelled due to train strikes. Luke indicated that they were aiming for an October date.
57. Maud said she was preparing a short paper for the board on litigants in person and would send it to Luke in a few weeks.
58. Jenny was interested about the senior level focus on operations. She asked whether the FJB was looking to try to find best practice across the board and how KPIs were set.
59. Luke said that at the moment the KPIs were based on reporting at a national level. The MoJ were speaking to HMCTS and Cafcass to look at how local performance could be measured but were aware that regional variation existed. The Board was at an early stage and would look to work to have more sophisticated ways of measuring for the system.
60. Judge Venables asked whether she understood him to say that there would be a review of judicial and system resources alongside the data. So that we could be aware of the impact of resources. Luke said that they were not quite at that stage but HMCTS were looking at this. Judge Venables asked whether it was recognised that without having the resource information they would not fully able to understand the data of disposal rates and duration etc. Luke acknowledged the limitations of the current data.
61. The Chair thanked Luke for giving the FJB update and answering questions from Council Members.

#### **Agenda item 7: Topic for annual debate (Nov/Dec 23)**

62. Topics suggested:

- Trauma
- Surrogacy
- Intermediaries
- Codified law for cohabitants

63. Question suggestions received:

- ‘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?’
- ‘Do intermediaries add value for families?’

64. The President agreed that trauma would be a useful vehicle to take forward the discussions at this year’s FJC Conference and was a very important topic. However, cohabitation is also an important topic, and there was a need to push that up the agenda regarding the disparities between married and cohabiting couples. For the debate to be effective there would need to be a topic that had two opposing sides, and the topic of trauma may not lend itself to that, whereas cohabitation does.

65. Judge Venables agreed that cohabitation would be a great topic. Jenny said she had been promoting impact of trauma as a topic but sees that it would be one sided and thinks that cohabitation would be a good topic for a debate. Ruth Henke KC said she would vote for cohabitation. She also drew attention to the different law in Scotland and Ireland on cohabitation and would be willing to speak if short of volunteers.

66. The Council agreed that cohabitation would be the debate topic. The Council now needed to agree a question.

**Agenda item 8: Communications strategy**  
**- Comms Activity feedback**

Comms Feedback

67. Those that have had the opportunity to speak about the FJC have found the PowerPoint a helpful tool.

FJC Website Data

68. Between 24 March and 24 June 2023, the top 5 most visited pages on the FJC website were:

1. FJC Vacancy (2221 views from 1691 users)
2. FJC homepage (1627 views from 1074 users)
3. Guidance on the treatment of pensions on divorce a guide for professionals (1046 views from 801 users)
4. Latest News (785 views from 489 users)
5. Members (587 views from 409)

69. Most visited individual page: Upcoming events (519 views from 372 users)

70. Most visited guidance: Financial needs (202 views from 135 users)

71. Vinice asked whether the Council wanted to consider how we can utilise this information and whether there was any information missing.

72. The Chair asked for any suggestions on how we present and use this data to be sent to the secretariat.

73. Natalia said that this forms part of the ongoing conversation about what is included on the website. She will fold this into the next meeting of the Comms working group.

**Agenda Item 9: Any other business**

74. None

**Agenda Item 10: Response to questions submitted in advance by members of the public**

<b>Question &amp; Answer</b>
<b>1. How does the Council gain insight into the implications of changes to public law care proceedings on Local Authorities? For example, Pre-proceedings PLO work and the LA facing the costs of any expert assessments</b>
Answer: The primary source of insight comes from the Council members who have Local Authority (LA) roles. Importantly, those Council members represent both the legal and social work perspectives, from two different LAs. The Council can also draw on the experience of other lawyers (including from Cafcass) and judges (including magistrates) who do public law care work and who have to grapple with the same issues as LAs, albeit from a different perspective. Added to that, we have input on the role of experts through the Council, and through the experts' sub-group (and have recently produced revised joint guidance, with



British Psychological Society(BPS), on the instruction of psychologists). That means the Council has the benefit of a wide spectrum of views.

One issue, for those who represent parents and children, is the limited scope - and funding - for advice in PLO pre-proceedings. The scope and funding of legal aid for pre-proceedings work are issues for the government of the day to decide, and not a matter for the FJC to answer, but the current limits are factors in considering how the PLO operates pre-proceedings. Parents might be entitled to Legal Help (basic legal aid to cover advice and assistance, short of representation in court). The LAA guidance will be attached to this answer when it is published on the website.

With regard to the cost of expert reports, contributing is not within the scope of Legal Help. The fixed fee for this work is £132 and entitlement is means and merits tested, so not all parents are entitled to Legal Help. For solicitors to 'escape' the fixed fee and be able to charge hourly rates, the actual cost of the work (charged at LAA hourly rates) has to exceed the fixed fee by three times. These factors can be disincentives to solicitors undertaking the pre-proceedings work and it means, in general, only very junior practitioners are allocated to the work. If parents cannot obtain good, independent legal advice, then pre-proceedings work may not have the impact intended and could be open to challenge if the LA issues care proceedings – potentially adding to costs, and creating delay.

The FJC recognises that the court needs to be able to rely on pre-proceedings work to give a case the best chance of concluding without undue delay (and within 26 weeks). Otherwise, there is a risk of work having to be done again, incurring more costs and increasing delay. The FJC recognises that 'front loading' a case in this way does require additional resource up front on the part of the LA.

## **2. Please comment on the consultation re mandatory mediation.**

### **Answer 2:**

The FJC have responded in full to the Ministry of Justice consultation '**Supporting earlier resolution of private family law arrangements. A consultation on resolving private family disputes earlier through family mediation.**'

We believe the focus should be on finding safe solutions for children and their families.

We do not agree with the underlying premise that mediation should be compulsory. MIAMs however, in general should be, subject to the exemptions. A MIAM takes place prior to mediation and does not affect the voluntary nature of mediation

We take the view that all carers (including parents and grandparents) should receive the fullest and best information about alternatives to dispute resolution in court, court process, domestic abuse in all its forms and the courts duty to protect vulnerable witnesses and parties. Information should be clear and inclusive using vocabulary carefully to diffuse conflict. It should be provided irrespective of attendance at a MIAM.

Exemptions and clearer screening and information around domestic abuse in all its forms need to be in place to protect survivors of abuse for whom mediation is inappropriate.

We are not in favour of a mandatory requirement to attend a shared parenting programme before an application can be made to court for a S8 Children Act order. True engagement with any parenting programme requires the participants to be willing participants. Mandating attendance is likely to fail resulting in delay. Where appropriate, we believe the conclusion of the MIAM would be the appropriate place and time to signpost to a shared parenting

programme for those who are not exempt. Such signposting should be dependent on a trained mediator's assessment of suitability.

Mediators should be trained to the highest level in screening for less obvious abuse such as coercive and controlling behaviours and trained in working with neurodiverse participants.

The FJC's full response will be published on the website this month.

**3. When does the Council expect to finalise its draft guidance on Covert recordings in family law proceedings concerning children?**

**Answer 3:**

The final draft of the Covert Recordings Guidance has been signed off in principle by the Council, subject to sections on data protection being reviewed by the Information Commissioners Office (ICO). A response was received from the ICO on 6 July 2023 and are being reviewed by the Working Group Chair.

We would hope to finalise the guidance before the start of the new legal year, if possible.

**4. What are your experiences with the Coercive Control Act? Did it turn out to be helpful in the context of child custody proceedings?**

**Answer 4:**

The Domestic Abuse Act 2021 has had an impact on child arrangements proceedings in a number of ways.

The definition of 'domestic abuse' in s.1 of the Act and the understanding of children as primary victims of domestic abuse in s.3 of the Act have been incorporated into Practice Direction 12J of the Family Procedure Rules and therefore apply in all child arrangements cases in which domestic abuse is raised as an issue.

The provision in s.63 of the Act that any party who is, or is at risk of being, a victim of domestic abuse shall be deemed to be a vulnerable witness in family proceedings, has been incorporated into Part 3A of the Family Procedure Rules and Practice Direction 3AA on Vulnerable Witnesses. This has meant that those alleging domestic abuse in child arrangements proceedings have automatic access to special measures to ensure they are able to participate effectively in proceedings, as free as possible from fear, intimidation and the effects of trauma.

The provision in s.65 of the Act which prohibits direct cross-examination of or by an alleged victim of domestic abuse, or enables a court to prohibit such direct cross-examination, has been implemented by means of a new Practice Direction 3AB of the Family Procedure Rules. This sets out a scheme for the court to appoint a Qualified Legal Representative to conduct cross-examination on behalf of the prohibited party, and applies to all child arrangements proceedings commenced after 21 July 2022.

The provision in s.67 of the Act, which extends the circumstances in which so-called 'barring' orders may be made under s.91(14) of the Children Act 1989, to prevent repeated applications to the family court as a means of perpetuating a pattern of coercive and controlling behaviour, has also been incorporated into Practice Direction 12J, as well as Practice Direction 12Q which deals specifically with the application of s.91(14).

The Induction training providing by the Judicial College for new family judges now includes a more extensive focus on domestic abuse, including all of the new provisions and procedures introduced by the Domestic Abuse Act.

The FJC's Domestic Abuse Working Group intends to monitor the implementation of the new procedures, particularly the scheme for the appointment of a Qualified Legal Representative to prevent abusive cross-examination, which has now been in operation for almost 12 months.

**5. Would it be in the Public Interest to make Family Law Cases public to ensure that children's wishes and feelings are heard and respected?**

**Answer 5:**

Whilst transparency in the family courts is needed to ensure that the voice of the child is being heard throughout proceedings, it is vital this is done in a way that prevents the child and wider family being identified.

Being involved in proceedings is stigmatising enough for children and families, it is an incredibly difficult, stressful and often traumatising time for them and we must do everything we can to minimise this. Proceedings can involve the sharing of incredibly sensitive and confidential information and it is vital that this is not shared outside of the courtroom.

It is true that we need transparency in order to scrutinise decisions, ensure fairness and equality and to raise awareness of policy and practice issues. This cannot and must not come at the expense of children and families' rights to privacy and anonymity.

The aim is for the President's Transparency Pilots to help us to find a safe and confidential way to open the family courts to scrutiny.