



Family Justice Council Meeting

Monday 18 November 2024

Attending:

Chair: Mr Justice Keehan
Sir Andrew McFarlane, President of the Family Division
Mrs Justice Morgan
Jenny Beck, Private Law Solicitor
Matt Clayton, ADCS
Rebecca Cobbin, HMCTS
Louise Duckett, Public Law solicitor
Maud Davis, Public Law Solicitor
Ruth Hay, Family Mediator
Dr Andy Hayward, Academic
HHJ Rachel Hudson, Circuit Judge
DJ Stewart Hughan, District Judge
Bernadette MacQueen, Legal Adviser
HHJ Madeleine Reardon, Circuit Judge
Natalia Schiffrin, Magistrate,
Lindy Stephens, Public Law Solicitor
Dr Fiona Straw, Consultant Paediatrician
Luke Taylor, MoJ
Kate Thomas, Cafcass Cymru
HH Karen Venables, Retired Circuit Judge
Dr Sheena Webb, Child Mental Health Specialist

Apologies:

Vinice Cowell, Parent and Family Rep
Angela Frazer-Wicks, Parent and Family Rep
Ms Justice Henke,
DJ Julian Hussell, District Judge
Louise MacLynn KC, Silk
Simon Rowbotham, Barrister
Amy Shaw, CJC
Barry Tilzey, Cafcass

Agenda item 1: Welcome and Announcements

1. The Chair welcomed attendees and expressed gratitude to Maud Davis and Judge Venables for joining the meeting to help the Council consider the Alienating Behaviours and Medical Treatment guidance documents.

Agenda item 2: Minutes of last meeting and matters arising

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

Agenda Item 3: Family Justice Board Update

4. Luke updated that the FJB have not held a formal meeting post-election, although they aim to meet before Christmas. Their work to deliver against their priorities continues. This includes looking at the drivers for delay and analysing the reason for variation at Local Family Justice Board (LFJB) level and what more could be done to support. They have held roundtables with each of the 7 HMCTS regions and all of the Local Family Justice Board (LFJB) chairs to talk about progress against priorities and any blockers experienced. They are working towards a national LFJB conference in early December. The Government are still working through the implications of the budget and departmental allocation decisions, but there will hopefully be more clarity in next few weeks, which will help the FJB to plan activities into 2025-2026, including Pathfinder.
5. The Chair asked how the FJC Domestic Abuse Working Group might be able to support work on improving the experience for Domestic Abuse survivors.
6. Luke suggested keeping that action open. Conversations around domestic abuse are still live with Ministers and the FJB will want to look at this issue when it meets. The FJB is still committed to looking at a measure of the experiences of families and survivors in the Family Justice System, so is keen to keep lines of communication open with the FJC working group.
7. The President expressed concern that FJB meetings have not been held regularly. He had opened a conversation with Minister Ponsonby about whether the FJB would benefit from having an independent chair.
8. The Council agreed with the President's view.

Agenda Item 4: Alienating Behaviours Guidance seeking final approval from the Council.

9. The Chair offered grateful thanks to the working group and its chairs, Jenny Beck, and Judge Karen Venables, for their work on this guidance, which also included significant work in reading and considering consultation responses. MoJ, Cafcass, and Cafcass Cymru were provided with a copy and have not raised any issues. The Chair noted that Simon Rowbotham raised some concerns last week that the Chair reviewed and considered that the topics had been discussed fully in Working Group meetings and a consensus view reached. The President has agreed to provide a foreword, and the guidance will then be issued, if approved by the Council.
10. Jenny thanked everyone for their input, noting that many hours of work had gone into drafting and amending the guidance, giving full consideration to every consultation response.
11. Judge Venables agreed that the guidance was informed by healthy debate, and the group was pleased with the final version. It will hopefully offer uniformity and consistency of approach.
12. It was agreed that the group would not be stood down yet in order to monitor any responses and potentially review the guidance in the future, to consider any new case law etc. It was noted that this does not invite further consultation but leaves open the option to review the position down the line.

13. Sheena noted she has had discussions with Dr Jaime Craig, who thought that further conversation might be needed about disseminating guidance to experts. Sheena observed that experts could be drawn into making inferences about alienating behaviour, and so they needed their attention drawn to the guidance, and support to understand what to ask for and when.
14. The Chair asked for views on whether the names of working group members should be published on the guidance.
15. The President preferred that the guidance should be owned by the whole Council, with all due respect to those who have worked hard on it, as it has been signed off by the full council, and it should be published this year.
16. Secretariat noted that the guidance would need to be proofread, and conversations with Press Office suggested that December would be the earliest opportunity to publish.
17. The President offered strong praise to the working group for taking on such a complex topic and producing balanced and clear guidance on the right approach to take.
18. One of the DJs noted anecdotally that alienating behaviour comes up in every fact-finding before them, so it will be very helpful to have this guidance.
19. The Council approved the guidance, subject to proofreading.

Agenda Item 5: Neurodiversity Guidance seeking final approval from the Council.

20. The Chair offered thanks to the working group and its co-chairs for producing much-needed guidance so swiftly and asked for any questions from the Council.
21. The President thanked the group for their work. He noted a small amendment to a reference in the guidance and noted that in his capacity as President he was consulting leadership judges on draft guidance for judges on intermediaries.
22. Ruth suggested adding the description of neurodiversity into other guidance too. Jenny Beck agreed that it could be helpful for any future guidance on trauma-informed approach.
23. The Council approved the guidance.

Agenda Item 6: Medical Treatment Guidance seeking final approval from the Council.

24. The Chair offered thanks to the working group and asked the Council for any questions.
25. The President asked whether Maud Davis had consulted the Official Solicitor's team on the guidance.
26. Maud noted that they had worked with the OS, and thanked Natalia Schiffrin for her input on simplifying the language of the summary and the guidance.

27. Natalia asked whether there was any funding for there to be paper handouts for the parents' summary. Having the guidance on the website was less convenient for parents who may be feeling overwhelmed.
28. The secretariat noted that there was discussion at a MoJ roundtable about hospitals being able to offer paper copies.
29. Maud noted that the glossary still needed to be finalised, and there would be a full glossary for the main guidance and a tailored glossary for the summary to avoid confusion where terms do not appear in the summary.
30. Maud also noted an ongoing discussion point from the MoJ roundtable about the difficulty for someone to find a specialist solicitor in this field and whether the Law Society or the Solicitor Regulation Authority would be willing to set up an accreditation scheme. It would be a narrow group of people, but currently those that work in this field fall within multiple categories. Maud suggested it would be helpful if the MoJ could continue looking at this.
31. The Chair thanked Melanie Carew (in absentia) for her invaluable work on the guidance, recognising that preparing this guidance has been a long process.
32. The Council approved the guidance in principle, subject to the glossary of terms being finalised and any comments from the MoJ.

Publication of Guidance

33. The Chair suggested that the Alienating Behaviours guidance should be published first, suggesting early December.
34. The President suggested that we could use the publication of the Alienating Behaviours guidance in early December to trail publication of Neurodiversity and Medical Treatment in the coming months.
35. It was noted that the Presidential guidance note on intermediaries would go out at the start of next term.
36. Jenny suggested it would be helpful for this guidance note to be published at the same time as the Neurodiversity guidance, or just before.
37. The Chair suggested the following order for publication:
 - Alienating Behaviours
 - Neurodiversity
 - Covert Recordings
 - Medical Treatment
38. The Council agreed to the Chair's proposed order and to trail the 2025 publications with publication of the alienating behaviours guidance.

Agenda Item 7: Business Plan Progress

- **Updates from Working Groups**

Activity 1: Covert Recording – Chaired by Natasha Watson

39. The guidance is with the Working Group Chair for a final check before publication in 2025.

Activity 2: Comms and Website Working Group

40. Covered later within the comms strategy update.

Activity 3: Domestic Abuse – Interim Co-Chairs, Professor Rosemary Hunter, and Dorothea Gartland

41. The Chair summarised the ongoing workstreams: mapping the landscape of domestic abuse activity in the Family Justice System; preventing abusive cross-examination; disclosure of fact-finding judgements; and access to justice in Family Law Act applications. He noted that all are very important strands and the work continues.

Activity 4: Experts working group – Chair Williams J – Fiona Straw is the FJC rep

42. The Chair praised the success of the Experts Symposium in October and noted that: Mr Justice Williams will continue delivering training on treatment of experts; the Experts Handbook is being progressed by a separate working group; the SIHIS pilot continues in three centres around the country. There have been relatively small case numbers in the pilot so far (35-40 cases).
43. The President noted that the bulk of cases across the three pilot sites had been from Sheffield, and of the c.40 cases only 8 had gone to court.
44. The President praised the success of the Symposium and quality of the Welsh Government venue, noting that a good cross-section of people attended.
45. Maud Davis noted that she has been recruited by the National Children's Bureau (NCB) to be on their advisory group for research.
46. Fiona gave an update that the DfE are in process of applying for extra funding to try to extend the time for the pilot, and she will give a further update to the Council when she knows more. Also, following the Symposium, the Welsh Government are keen to explore holding a similar pilot in Wales. The pilot appears to be having a very positive impact on the care of children, and we will see if it leads to any reduction in delay for cases going through Family Court.
47. The President noted that the FLBA have been asking for Stavros's slides from the conference, which have not yet been provided. The secretariat to follow this up.

Activity 6: Alienating Behaviours – Chaired by Jenny Beck

48. Covered above.

Activity 7: Financial needs working group – Chaired by Peel J

49. The updated 'Guidance on Financial Needs on Divorce' will feed into the 2025 publication schedule.

Activity 8: Medical Treatment – Chaired by Maud Davis

50. Covered above.

Activity 9: Disclosure to Children and Young people – Chaired by Judge Venables

51. Karen gave an update that the FJYPB will provide links for the website but will not draft their own guidance note as they do not think the FJC site is where children would naturally look for resources.

Activity 11: Neurodiversity – Chaired by Jenny Beck and Vinice Cowell

52. Covered above.

Activity 12: Diversity & Inclusion Scoping Group – Chaired by Kate Thomas

53. Kate asked FJC members to continue to think proactively about making a wider group of people aware of our work, which could then lead to inviting people to get involved in working groups and FJC activities. She also asked the Council to consider how members can make themselves available to potential new people through opportunities like shadowing and Q&A.
54. The Chair agreed and reminded everyone that they can co-opt people ad hoc to working groups where specialist expertise is needed. This increases awareness of what we do and gives potential applicants greater opportunity to be successful in future recruitment.

Activity 13: Voice of the Child Scoping Group – Chaired by Maud Davis

55. Maud updated that the group is developing a useful relationship with NFJO in the interests of not reinventing the wheel – the NFJO are doing a lot of work on voice of the child. The group has co-opted a number of members, including Caroline Little and Beverley Sayers from the original FJC group on this topic. The group intends to review the Guidelines on Judges Meeting Children who are subject to Family Proceedings, which was previously designated as Activity 10 on the Business Plan.
56. The Chair noted that the Council thought this should be a standing group in order to act as a lens for looking at other guidance.
57. Maud agreed and noted that the model from D&I would be useful.
58. Beatrice offered that the Children's Commissioner's Office could be of help if the group wants to be in touch about anything.
59. Maud noted that the group is looking at whether it would be helpful to have an academic reference group. A new group Chair was needed, for which Jenny and Kate both volunteered.

Activity 14: Trauma Informed approach in the Family Justice System Scoping Group – Chaired by Dr Sheena Webb

60. Sheena gave an update that the working group has had two meetings so far to scope out ideas and move towards drafting Terms of Reference. It has good membership representation across different areas. The group wants to provide some specific guidance, and discussions have shown that there are a wide range of issues: first, minimising the impact of court proceedings; second, supporting effective participation, which can link to neurodiversity; third, exploring how trauma informs our understanding of families, which can link to experts and interventions; and fourth, the impact of trauma on professionals within the Family Justice System.

61. The first and second issues will be the easiest and most useful areas to start with, and Matt and Angela have agreed to look at lived experience of children and families as a starting point for the guidance. Beyond guidance, the group also wants to set out a longer roadmap to explore the need for training, awareness, and partnerships with other parts of the system, like HMCTS. Sheena welcomed views from the Council on these proposals.
62. The Chair gave positive feedback on these initial proposals.
63. Jenny agreed that this would be an important piece of work from a frontline perspective and noted that the NFJO may be able to help on lived experience: they could commission a piece or explore existing qualitative data. The Domestic Abuse Commissioner's Office also has a lot of existing evidence.
64. The Chair noted that HMCTS are considering nominating representatives to join the Neurodiversity, Domestic Abuse and Trauma-Informed Working Groups.
65. The Chair asked if any new members wanted to volunteer to join any working groups, with particular emphasis on the need to support the communications group.

Agenda Item 8: [Taking a Strand](#) – An open letter to the Family Division and Family Justice Board

66. The President explained that he received a letter addressed to the Family Division, the Family Justice Board and himself with concerns about the use of hair strand testing in decisions in the Family Court. The President has referred this to the FJC as a matter of urgency, and suggested setting up a new working group with a view to scoping what might need to be done.
67. Sheena noted relevant past experience and offered to be involved.
68. The Chair asked for others to consider volunteering and inform the secretariat. The group can decide a Chair and provide an update in January.
69. The secretariat also reminded members that they should also consider the option to co-opt non-Council members.
70. Judge Reardon suggested co-opting someone from the toxicology testing world.
71. Judge Hughan advised that this should be an expert, not a member of a company.
72. The Chair suggested members of the new group will want to read various toxicology reports.

Agenda Item 9: Events

Debate

73. The Chair updated that five of six speakers have been confirmed, and he would be meeting them shortly to discuss the motion in more detail. There are already 179 people signed up to attend the event, 40 in person and 139 online.
74. Secretariat noted that we currently have a psychologist academic, a legal academic, two barristers and a solicitor, and that Theis J is making enquiries for the sixth speaker.

75. Jenny asked if we should consider a speaker with lived experience.

76. Judge Reardon noted the motion is a very legal issue, so it may be difficult this year.

2025 Conference

77. Secretariat updated that the conference date would be confirmed before Christmas and was likely to be in early March 2025 at a venue in the Midlands.

78. Angela suggested that the conference and/or the Bridget Linley lecture could be given by someone connected to the Family Rights Group (FRG) given that it would be their 50th anniversary. A theme could be the importance of involving those with lived experience of Family Justice.

79. The President agreed that it would be good to connect in some way with the FRG 50th anniversary.

80. Jenny Beck suggested a neurodiversity session could be included.

81. The Chair suggested we could include a session on women in prison, after recent discussions with Camilla Baldwin and Dr Shona Minson.

82. Sheena noted the importance of considering who gives the lecture and whose voices are highlighted on the day given the D&I theme and the biases we are aware of within the system.

83. Kate agreed to put conference topics on the agenda for the D&I meeting in early January to consider the spread of topics.

Agenda Item 10: Communications Strategy

84. The Chair invited any reflections on the strategy paper and reminded the group that more volunteers are needed for this group.

85. Jenny Beck volunteered and noted that the NFJO has an impact tracker spreadsheet to record how many people they think they reach with each activity, and any blockers that might have prevented them reaching further. For example, if 200 people attend a talk, they record that they have reached 200 people. This could be a helpful tool for the FJC.

86. Natalia noted previous discussions about analysing the website analytics to map out how people use the site.

87. The Secretariat will provide a proposal for updating the website.

88. Natalia raised the Transparency Project article regarding the FJC open meeting and recommended everyone should read it.

89. The Chair added that the Transparency Project had also written to the FPRC and made similar points. For the FJC, they suggested looking at how we structure the open meeting and whether to allow people to make follow-up questions.

90. The secretariat reminded the Council that aspects of responses have to be scripted where we rely on MoJ and DfE responses, and we would still need to be able to screen out inappropriate questions but follow ups could be added.

Research update

91. Andy updated that he has had a comprehensive handover from Professor Rosemary Hunter. He invited members to contact him if they need academic expertise in any of their groups as he can act as a bridge to the academic community. He noted that some academics have already asked him about giving presentations to the FJC so can facilitate this.
92. The Chair noted that academic presentations used to be done at three out of four of the FJC meetings each year (excluding the open meeting). They come at the end of the meeting before we move onto AOB so that they have free reign for the last 30-45 minutes.
93. The President suggested giving Andy a list of the academics we have heard from over the last few years.
94. Natalia noted that Rosemary would also suggest at the end of her research round-up if any of the authors of those papers might be able to contribute valuable presentations, so Andy could consider doing this.
95. Andy highlighted some of the reports he had shared with the group, including the Family Law Reform Now project, based at the University of Birmingham, which helpfully cuts across the entirety of family law and brings together blue-sky thinking proposals from experts and responses from academic practitioners. Andy also noted a Nuffield Foundation Observatory Fair Shares project, an important study on private family law which has some follow-up papers coming out, one of which is on domestic abuse conduct for the purpose of division of assets.
96. Jenny asked whether Andy knew of the Bath neurodiversity study, as questionnaires have gone out and it looks like an important piece for ascertain data on neurodiverse parents and children passing through the system. Also, Marianne Hester at Bristol is doing a piece about domestic abuse prevalence.

AOB

97. Natalia asked for an update on the Women in Prison meeting.
98. The Secretariat noted that we are waiting for responses from the organisations that were involved in the roundtable meeting. The President and Keehan J have an upcoming meeting with Shona Minson on this topic.
99. The President raised that DfE have published plans for work on children's social care, and it is likely that a bill would come before Parliament in due course. This would likely include Deprivation of Liberty cases (DOLs), so the Council may want to have this as an agenda item for the next meeting and introduce a workstream to monitor proposals and be available to respond to any consultation.
100. Maud noted that this follows on from Josh MacAlister's Independent Review of Children's Social Care.
101. Lindy noted that she will be attending a Nuffield meeting on 26 November to discuss this.
102. Ruth Hay raised 'Planning Together for Children'. The Family Mediation Council (FMC) have spoken to Cafcass, who have said that their current program is not

suitable for people not in court because it is very court focused. But the question has been raised about funding for their programmes because mediators cannot currently make referrals, which is tricky as the intention is to prevent unnecessary cases going to court. The FMC have also spoken to DWP who have some local offerings, but we do not know if these will be adequate if parties end up in court, as Planning Together for Children is the court-recognised version.

103. The Chair asked whether the FMC have made contact with the MoJ and DfE family justice department, as both are keen on non-court dispute resolution.
104. Ruth confirmed that the FMC are speaking to MoJ to look at how to build relationships. They have also spoken to Child Maintenance Service to see what they can do in their process to refer to mediation.
105. Ruth noted a 2016 MoJ leaflet on mediation needs updating following the changes made this year. The MoJ are aware that an update is needed, but it would be good to get work started on this. The Chair suggested the FMC contact the MoJ and that they would likely be grateful for the assistance in updating the leaflet.
106. Ruth asked how often the FM5 form is used. This is the new form to confirm an applicant has tried non-court dispute resolution (NCDR) before coming to court. However, some magistrates appear not to be aware of it. Ruth asked who would be able to provide data or information on the use of the form.
107. The Chair suggested that the HMCTS representative might be able to assist and asked the secretariat to follow this up.

[END]