



**Family Justice Council
Minutes of the meeting held 6th July 2009**

Present:

The Right Honourable Sir Mark Potter (Chair)

Mark Andrews, Justices' Clerk
Sue Berelowitz, Office of the Children's Commissioner for England
Annabel Burns, DCSF
Martyn Cook, Family Magistrate
Jane Craig, Family Solicitor (Private Law)
Nicholas Crichton, District Judge Magistrates' Court
Katherine Gieve, Family Solicitor (Public Law)
Elizabeth Gillett, Clinical Psychologist
Sheridan Greenland OBE, Ministry of Justice
Teresa Hallett, CAFCASS Cymru
Keith Ingham, Welsh Assembly Government
The Honourable Mrs. Justice Eleanor King
Bridget Lindley, Consumer Focus, Parent Representative
Erika Maass, Ministry of Justice
Professor Judith Masson, Bristol University
Her Honour Judge Lesley Newton
Rosalyn Proops, Paediatrician
Deborah Ramsdale, Staffordshire County Council
Patrick Reeve, Legal Services Commission
Khatun Sapnara, Family Barrister
Beverley Sayers, Family Mediator
Christine Smart, Cafcass
Simon Tanner, NHS

Alex Clark
Paula Adshead
Joanna Wilkinson

Apologies:

The Right Honourable Sir Mathew Thorpe (Deputy Chair)

Stephen Cobb QC Family Barrister
Carolyn Hamilton, Office of the Children's Commissioner for England
District Judge Marilyn Mornington

Announcements:

The Chair welcomed Deborah Ramsdale, who has been appointed following the resignation of Paul Clark. Deborah is Assistant Director Area Based Services, Staffordshire County Council Children and Life Long Learning Directorate, responsible for child protection in Staffordshire.

Sheridan Greenland is moving from her current post at the Ministry of Justice to run the Office for Judicial Complaints. The Chair expressed the gratitude of the Council for all Sheridan's help and support and wished her well in her new post. An announcement about her successor is awaited.

The Chair expressed the thanks of the Council to both Stephen Cobb QC and Rosalyn Proops who are leaving the Council. Their contributions to its work had been considerable and they will be missed. A recruitment campaign is under way to identify successors.

Minutes of the last meeting and matters arising

The minutes were approved with one amendment to show that Bridget Lindley did attend.

The item on the UN Convention of the Rights of the Child has been put over to the October meeting.

The Family Justice Board has met and the minutes of that meeting and the terms of reference will be circulated to members of the FJC. The Board will deal with issues in both public and private law and will take forward issues raised by Lord Laming. Its members include stakeholders but do not include service users. Ros Proops asked about the relationship between the Council and the Board. Sheridan said that the Board provides a forum for advice from the Council. The terms of reference for the Board do not refer to the FJC and the Council considered that this should be raised with the Board. The Council will be interested in considering how its priorities fit in with the work of the Board. The Board is looking at performance as a whole and for its next meeting in October will be considering data quality issues. The current position re data collection is unclear and differences in recording between different agencies (e.g. number of children or number of applications) leads to inaccuracies and confusion. The Council will be anxious to clarify its role with that of the Board and hopes the Board will ask for its advice on a range of issues. A short paper from

the Council for the Board setting out the Council's views on the relationship will be prepared for the President to take to the next meeting of the Board.

The Family Justice Board is, as described above, considering the implications of Lord Laming's report. The target for implementation of Lord Laming's recommendation on the establishment of a system wide target for timetabling is the end of this year. The main difficulty with targets is the infinite variations in every case which make every case different. Sheridan said that the concept centres on a timetable for the child which will start before proceedings. Interagency discussions are going on at present. The item will be discussed at the next meeting of the Children in Safeguarding Proceedings Committee in September.

Francis Plowden, who is chairing the review into fees, recommended by Lord Laming has attended a meeting of the Safeguarding Committee and taken their views. His report is expected in September.

Lord Laming's report and the government response will be on the agenda for the next meeting of the Council in October.

Family Legal Aid Funding: Progress Report

The Council discussed this topic at its meeting in April and had agreed to ask NYAS for an update for this meeting. NYAS had provided a document which had been circulated to members. The Council had also asked for, and been provided with, details of how the Statutory Charge was employed. For the Legal Services Commission, Patrick Reeve said that the LSC's response to the consultation on Civil Bid rounds for 2010 had been published. Meetings had been taking place with a working group of professional bodies to explore further options around fees and revised proposals to build in more graduation were being considered. Decisions are expected later this month. The report commissioned from Ernst and Young has been shared with the working group. In the response to the consultation the LSC has indicated that it will add specialist children contracts which will allow contract holders who just offer service to children in Rule 9.5 cases to offer that service nationally. Katherine Gieve commented that it was a significant advance that the LSC had listened to representations and had agreed to contract separately with public law and 9.5 providers. The Council would like to see the Ernst and Young report if possible. Patrick Reeve said that the report had not indicated that there would be a mass exodus from the Bar. Khatun Sapnara said that the Bar was reserving its position on the report and considering whether to commission a report of its own. Patrick informed the meeting that there was a reprieve for NYAS at present for at least the next 3 years. The position on Children Panel membership remains difficult. The FJC deplores the LSC's decision not to make panel membership a requirement for those bidding for children contracts.

Bearing Good Witness: Report from the Programme Board

Dr. Simon Tanner, who chairs the Board, addressed the Council, thanking it for its interest in the implementation of the recommendations of the Chief Medical Officer's

report. Lord Justice Thorpe sits on the Board. Dr. Tanner apologised that the Council had not always been kept as up to date as it might have been on progress and emphasised that the process of managing the introduction of the new system had been very complex. The best interests of children are at the centre of the scheme. Implementation had been 'uncharted territory' and the results from the pilot areas will be important. Four contracts have now been signed and a further two are anticipated. Each pilot will run for a year so there will be a staggered finish. The pilot will aim to establish the true price to the NHS and LSC of the system and whether a result was produced that was better than the current system. There will need to be both a quantitative and qualitative assessment. If the time for production of reports was not shortened that would not be a success. Qualitative data will be partly based on subjective views from practitioners but the essential point will be whether it is improving things for children. Any evaluation must take into account effectiveness and efficiency. Costs issues will be relevant since if the scheme is successful it will enable judges to refer cases to a single team of experts. Experts belonging to a team, not retained by the local authority, should be more acceptable to parties. HHJ Newton commented that one of the reasons for the CMO's report in the first instance had been to tackle the lack of experts and she commented that it had been hoped that some contracts with more medical members would be let. Dr. Tanner agreed that there were still gaps in this area. Dr. Proops mentioned that in the field of radiology there is a group of experts who would want to develop a team. This would need to be set against a national network. Dr. Tanner said that aspirations still remain and big issues still remain to be resolved. Once these have been got through the system can be spread wider.

Instructions for reports will be made in the usual way and the fees will be paid directly by the LSC.

Work has been done on communication. Information is available on the LSC website and local courts have received information about the pilots. Material will be sent out to local Family Justice Councils. Khatun Sapnara commented that information to the local bar would be necessary and she would be happy to forward any material.

Media Attendance in the Family Courts

Erika Maass from the Ministry of Justice attended to inform the Council of the progress since the change in the position for media attendance in the family courts in April 2009. The current position is that the media are able to attend but are able to report very little of cases. The Secretary of State is keen to see this changed so that, as in the youth courts, the press are able to report the substance of cases. Provision has been made for legislation for this in the draft legislative programme issued last week, which has been included in the Improving Schools and Safeguarding Children Bill: 'putting in place a new framework, based on the position in youth courts, to enable the media to report the substance of family proceedings whilst protecting the identities of the families and providing the courts with discretion to disapply this safeguard where it is in the public interest and safe to do so.' The intention is to simplify arrangements for both attending and reporting.

Concern was expressed that the system of reporting in the youth courts enables publications of details of medical and social work reports.

The President asked about the position of s12 of the Administration of Justice Act and Erika said that it was planned to amend this. She emphasised that there would be no question of identification of parties and that there was no suggestion that judicial discretion would be removed. Concern was raised that if the only method of being sure that there would be no difficulty in any case was by way of exclusion of reporters, there would be many more cases where they were excluded and the judiciary would be seen as opposing the policy. Erika informed the meeting that some elements of policy remained to be decided and that the relevant clauses of the Bill had yet to be drafted. There will not be further formal consultation but there have been meetings with bodies such as Cafcass, the RCPCH and 11 Million. The President said that the Council did not, but would like to, know, how the matter was put and what the views were as to which no information has been supplied. Erika said that strong concern has been expressed about the risk of disproportionate effects on various categories of cases, particularly those involving parties resident in small communities, BME groups and well known individuals.

Nicholas Crichton asked specifically whether it was intended to allow the press to see reports; this impression having been given by Bridget Prentice in an interview on the Today programme. Erika said that to allow the media to report the substance of cases to enable better informed reporting could lend itself to the argument that that would involve the disclosure of reports.

Sue Berelowitz said that 11 Million were dismayed at the parallels being drawn with the Youth Courts. She considered this to be a mistaken parallel since in the Youth Courts there were allegations of criminal behaviour which was not the case for children in the family courts who were caught up in events not of their making. She expressed concern that the Secretary of State was said to be passionate about transparency and openness and felt that, rather, he should be passionate about children and the paramountcy principle. She said that 11 Million were discussing taking forward consultation with children, since there was a strong need for proper evidence based work. Their findings which will be shared with the FJC will be based on 150 interviews with children and young people.

Khatun Sapnara said that the basis for the previous consultations was very different to what was now being proposed, and since it was a significant departure, it would not be sufficient to rely on the responses to earlier consultations.

Keith Ingham emphasised that the Welsh Assembly Government had issues with the proposals.

Comparisons were made with Australia, where the press are not allowed to see any reports on the basis that it would breach rights of privacy.

HHJ Newton raised the question of press access to papers filed in proceedings and how that could be dealt with. Judith Masson commented that if information could be disclosed she had strong doubts that this would be Article 8 compliant and considered the proposals wholly misconceived.

Christine Smart commented that the young people with whom Bridget Prentice had met, whom she mentioned on the Today programme interview as being supportive of the process, had come from Cafcass' young people group and that they were keen to see clear protection for children. They had raised with the Minister the issues of BME children. Christine was not sure that they were aware that documents might be disclosed to the media.

Deborah Ramsdale raised the continuing work being done by the Social Work Taskforce and the potential impact on their work to raise the profile of social workers, should social workers be in fear of naming and shaming. The same issues would arise for medical experts. Dr. Proops said that colleagues providing medical reports could be conflicted by the needs of the child and the requirements of their own regulatory bodies, which require confidentiality. She considered that they might fall foul of their regulatory bodies and that this would affect the nature of reports.

Mrs. Justice King said that the judiciary had discussed how they might best make material available to the media and had considered the reinstatement of openings by Counsel which could then be disclosed, but she considered that any provisions like this would need to be provided for in accompanying rules to legalisation and should be the subject of consultation.

Liz Gillett said that as a psychologist producing reports she would need to highlight confidentiality issues to those she was interviewing and that she considered that this would result in less information being provided which would undermine the value of the expert opinion in the report. The Council failed to see how it could be in the public interest for the details of psychiatric reports and other relevant sensitive medical information relating to individuals involved in family cases to be made available to the media.

Sue Berelowitz urged clarity on the Ministry to avoid any area of misunderstanding. She said that the provision of child friendly information was essential across all the spectrums of understanding to ensure that children understood the position. She also raised the position of very young children who could not give any kind of informed consent.

The FJC remained extremely concerned about the position concerning confidentiality and anonymity and would produce a short paper for the President to inform him in relation to his meeting on 15 July with the Secretaries of State from the MoJ and DCSF and an imminent meeting of the Family Procedure Committee on 13 July. If possible they would wish for members of the Council to be able to attend the meeting with the Secretaries of State.

Erika emphasised that the policy was still being finalised and clauses would be drafted during the summer and autumn.

The Council considered that it was very important for the public to know more about the workings of the family courts but considered that the Ministry must be fully aware of the consequences of its proposals. It noted that work on publication of anonymised judgments had not yet been taken forward and considered that this should happen as

a priority. Judgments provide the opportunity to marshal information and key issues while preserving confidentiality.

[The information paper was subsequently supplied to the President and to FPRC, who expressed similar concerns. The proposed rule changes were withdrawn for further consideration].

Paper on parties to public law proceedings who lack capacity.

The Council thanked HHJ Newton for her work on this paper. It will be further discussed by the Parents and Relatives Group and Safeguarding Proceedings Committee at their joint meeting which will follow the Council meeting and will then be distributed to the local Family Justice Councils with a request that they consider the questions in it. HHJ Newton thanked Judith Masson for her assistance with the paper.

Cafcass

Christine Smart detailed the statistics on allocations from Cafcass, which are available on the Cafcass website. There has been a rise in demand following the Baby Peter case. HHJ Newton said that in the Greater Manchester area the situation had changed from no public law cases to which a guardian had not been allocated to 102 unallocated cases. Cases sometimes reached the Issues Resolution Hearing, without an allocated guardian. District Judge Crichton said that in London cases were frequently reaching IRHs and Final Hearings without guardians and that some reports were now taking 30-32 weeks to be prepared. He expressed anxiety that solicitors were not always able to become involved in assisting the court. Katherine Gieve explained that solicitors are in a difficult position since they were not in a professional position to make proposals to the court without the assistance of a guardian and they would have neither sufficient information nor expertise.

Teresa Hallett updated the meeting on the CAF/CASS Cymru position. There have been no waiting lists since 2003 but they have noticed an increase in cases. Fortunately, they have had the resources to deal with this so far. They are keen to work with the police and local authorities on safeguarding checks and will screen all requests for s7 reports.

In conjunction with the agencies concerned, the President intends to issue interim guidance to attempt to provide a temporary solution to the current emergency situation. The draft guidance had been circulated to Council members. This temporary arrangement provides for short term local agreements which include the allocation of duty guardians. The interim guidance will be reviewed in March 2010 and consultation with the Council will take place at that time. District Judge Crichton said that the duty system had previously worked in his court as a stop gap but it must not become the norm. Something had to be done to ease problems in the short term and HHJ Newton said that she was pleased that the guidance was expressed to be interim only.

Concern was expressed that the safeguarding role of Cafcass was impacting too much on the welfare role. It was also suggested that the regular inspection programme of Cafcass by Ofsted could be impacting on output, since preparing for

and undergoing inspection was time consuming for staff. Concerns were also expressed as to whether Ofsted was the most appropriate organisation to inspect Cafcass.

The issue of safeguarding was complex. In private law cases it was very important that cases should be allocated on the basis of safeguarding issues but in public law cases this might not always be the most important criterion, as the local authority would have a role and responsibility. If a child is with foster carers he or she will need a Guardian to give a view. Risk needs to be prioritised and the local teams will need to make decisions on this.

The situation will be further reviewed in March 2010 but the Council remained pessimistic that there would have been any significant change by then. Achieving results will be very dependent on the demand for Cafcass' services. It was noted that the introduction of Cafcass' safeguarding role was originally treated as being cost neutral which does not appear to be the case. Professor Masson commented that there was an issue about rationing and whether there would be less service to all cases or service to fewer cases. She considered that more thought needed to be given to how to manage all cases with less service, indicating issues such as the variation in hours spent by different teams on the same tasks. Christine Smart said that Cafcass had been working to introduce better management practices. The Private Law Programme is a good example of good management of resources in that where no risk has been identified Cafcass' role ends. It was important to try and move away from s7 reports towards mediation and other solutions.

Concern was also expressed by members at anecdotal suggestions of changes to s41 of the Children Act 1989.

Voice of the Child: Guidelines for judges/RAPP

Draft guidelines for judges talking to children had been drawn up by District Judge Crichton and circulated to members. The intention of the Voice of the Child Group is not to change practice immediately across the board but to try to facilitate and encourage those judges who wish to talk to children. The meeting felt that a clear message needed to be included in the guidelines that this was not an exercise to gauge the wishes and feelings of the child, which would be done by Cafcass officers or other appropriate persons. The position of parents and their ability to make representations ought to be considered and further consideration on the age of children seeing judges might also be needed. There will be implications for training, and careful consideration of how to take any agreed document forward will be required, particularly when considering how it should apply in cases that are being heard by a bench of three magistrates.

District Judge Crichton and HHJ Newton would consider the paper further and redraft taking into account the comments of the meeting.

District Judge Crichton reported on the first meeting with the new Young People's group, facilitated by RAPP (Rights and Participation Project) which had been attended by himself, Christine Smart and Alex Clark. He said that it had been a very good start. Only six young people attended but they were all articulate and

interesting. It is hoped that future meetings will include a larger group of young people. The agenda for discussion will be steered by the FJC and each committee will be asked to consider appropriate questions that they may wish to raise with the young people.

Local Family Justice Councils

LFJC conference

The fourth LFJC conference took place at Highgate House in April. There was an encouragingly high turn out with representatives from 36 out of the 39 LFJCs and feedback was positive. Delegates particularly appreciated the opportunity to meet each other and discuss common concerns. A number of good ideas for best practice came out the conference, which will be considered and taken forward in due course.

CPD

The Council's application to become an accredited provider of barristers' CPD points is still pending. The Council has also applied to have certain fees waived and is awaiting the Bar Standards Board's decision on both applications. If the position has not been resolved by September the Executive Committee will consider the most appropriate way forward.

Funding

It is hoped that the transfer of the funding for events to the Secretariat will soon be completed. The Secretariat has consulted the LFJCs on their current practices, particularly with regard to incoming monies, to help inform proposals.

Websites

LFJCs have been encouraged to take up an offer from the Peninsula FJC to set up a network of local websites. Detailed proposals and costs have been circulated to LFJCs. To date, only five have confirmed that they wish to be included. Five have declined (quoting a lack of resources – time, staffing and/or money) whilst others are still in discussions.

LFJC activity and concerns

LFJCs are generally working to a high standard and hosting a variety of events. They respond fairly well to enquiries from the Secretariat and regularly provide minutes of their meetings, although there are still a small number which do not communicate well. The main concerns arising from the minutes of meetings relate to Cafcass delays and legal aid issues.

Research on the PLO

The first evaluation of the PLO was published on the 1st July (web link) and had concentrated on three initiative areas: London, Liverpool and Swansea. It had been both qualitative and quantitative and its aim was to inform future work. The main conclusion reached was that application of the PLO varies and success depends on how well it is applied. Local Authority compliance varies. Some concern was raised on the timing of the first appointment. A review of the pre proceedings guidance is recommended and work was still needed of disclosure of data. The lack of guardians was a cause for concern. The process for advocates meetings may need to be

further considered. Respondents felt that although the PLO was not necessarily speeding cases up it was resulting in better listing and fewer adjournments. When the reviewers looked at completed case files 70% of cases completed in less than 40 weeks and 84% of cases completed by week 50. This was not a random sample of cases and so some caveats must be attached to these results. The main themes that emerged were around the pre proceedings process and the researchers recommend a critical review of this process, especially around the rights of the child. Front loading of cases was seen as sometimes causing delay on cases coming to court and the paper work was seen as unwieldy and in need of revision. Members noted that it sometimes appeared that local authorities were concerned about criticism if the pre proceedings work had not been done.

Professor Masson asked what further evaluation plans there were. Sheridan Greenland explained that from an early stage, the Ministry had been working with local authorities in Liverpool to look at the end to end process. There has been no further research commissioned but there is a review of the PLO, including the forms, going on at present. This is led by Mr. Justice Ryder and will report in October. Guidance has also been picked up by the Social Work Practice Review and a best practice document is due to be published soon. Changes to the court computer system are not anticipated before 2011.

Reports from Committees

Executive

The Executive Committee met on the 15th June to approve the agenda for the next FJC meeting. It received a financial report from the Secretariat which indicated that all areas are within budget. It agreed that the Council should be asked to approve the holding of a second open meeting to take place in January 2010 and received a report on the developing links with the Social Care Institute for Excellence (SCIE) (see report of the Education and Training Committee below). It made recommendations for the process for recruiting service users to working groups of the Council.

ADR

Beverley Sayers spoke at the LFJC Conference about the need for ADR and encouraged the Locals to set up their own ADR committees. The committee has been working on guidance for local Cafcass and CAF/CASS CYMRU offices. It is also considering action to raise awareness of the issues involved in speaking to children and will look at the effects of the new legislation on openness in family courts in relation to mediation.

Children in Families

The consultation on private law fees is not now expected until the autumn. The Committee continues to follow the progress of the contact activities introduced last December and has begun work to assist in publicising the availability of these provisions among lawyers and mediators. The Committee has received an update from Ministry of Justice officials about the impact of media attendance and continues

to stress the importance of the implementation of the proposals to provide more information about family cases to the public. The Committee will be responding to the consultation on the new form C1A and looks forward to meeting with MoJ officials to take this forward. It looks forward to following up themes which emerge from the Dartington Conference.

Children in Safeguarding Proceedings

Francis Plowden, who has, following Lord Laming's report, been appointed by the MoJ to look into the impact of the increase in fees local authorities pay for instituting public law proceedings, attended that last meeting of the Committee to explain the remit of his work and to hear their views. The Committee raised its concerns about the difficulties in understanding what influences had impacted on the decline in the numbers of cases prior to the Baby Peter case and that statistics were inaccurate, which made the assessing of the correct level of fees more difficult. The Committee is preparing papers on Independent Reviewing Officers for circulation to Local Family Justice Councils and on parties who lack capacity to give instructions in public law cases. It will be holding a joint meeting with the Parents and Relatives group following the main meeting of the FJC.

Diversity

A forum was held at the House of Lords on the impact of recent changes in domestic violence legislation on BME and other community groups. The event attracted a wide audience and generated lively and informative discussions. The committee will now consider the issues raised at the event. Links have been established with LFJCs through a network of regional representatives. Work continues on the provision of interpreters with a view to producing a paper for the Council and the committee will also be looking at the UK Borders Agency protocol.

Domestic Violence

The Working Group responded to the Home Office consultation on ending violence against women and girls on behalf of the Council. It will also be responding to the consultation on the new form C1A. It continues work on a protocol for process servers and on revising the text on the FJC website on Domestic Violence. It has made progress on addressing the confusion that continues to arise concerning public funding for domestic violence cases and plans to produce a leaflet which it hopes can be circulated in October to coincide with media events around harassment and stalking.

Education and Training

Members have assisted with the rewriting and proof reading of the updated guide to the family justice system for the FJC website. A meeting has taken place with representatives from SCIE. SCIE have a contract with DCSF to produce training programmes for social workers and the Committee hopes to work with them on the provision of pre proceedings training. SCIE will be producing a funding proposal for the DCSF jointly with the FJC. At the next meeting of the Committee it will consider the best method of creating a training event toolkit for the LFJCs.

Experts

The Committee continues to seek a resolution of the problems encountered by the General Medical Council in obtaining transcripts of hearings when dealing with complaints about expert witnesses. It is also considering how best to take forward its business objectives on providing feedback to experts on the quality of their evidence. In conjunction with the Children in Safeguarding Proceedings Committee it will be further considering the use of overseas experts.

Money and Property

At its last meeting the Committee discussed the issue of instructing a single joint expert in financial cases and how valuable this is. This is a topic which it will continue to look at and which it will include in the best practice paper currently in preparation. The Committee also discussed the issue of arbitration in financial cases and will return to this topic at its next meeting.

Parents and Relatives

The Group will be holding a joint meeting with the Children in Safeguarding Committee at which it will be considering a number of issues of mutual interest, including the role of Independent Reviewing Officers, hybrid cases with both public and private elements, media access to the family courts and the parent pack that has been produced by the Ministry of Justice.

Voice of the Child

The guidance for judges speaking with children has been finalised and forwarded to the President for approval. Work is underway with RAPP (the Rights and Participation Project) to establish a working partnership with a new young people's reference group. Preparations are in hand to produce a DVD for professionals working with children, which will feature young people and their experiences of family proceedings. The group is also looking at immigration issues in relation to children of asylum seekers and unaccompanied children.