

FAMILY JUSTICE COUNCIL
MINUTES OF THE MEETING HELD
SUNDAY 26TH APRIL 2009

Present:

The Right Honourable Sir Mark Potter (Chair)

The Right Honourable Sir Mathew Thorpe (Deputy Chair)

Mark Andrews, Justices' Clerk
Stephen Cobb QC Family Barrister
Martyn Cook, Family Magistrate
Nicholas Crichton, District Judge Magistrates' Court
Sally Field, Ministry of Justice
Katherine Gieve, Family Solicitor (Public Law)
Elizabeth Gillett, Psychologist (Clinical Psychologist)
Sheridan Greenland, OBE Ministry of Justice
Teresa Hallett, CAF/CASS CYMRU
Professor Judith Masson, Bristol University
Marilyn Mornington, District Judge
Her Honour Judge Lesley Newton
Beverley Sayers, Family Mediator
Christine Smart, Cafcass

Alex Clark, Secretary to the FJC
Joanna Wilkinson, Assistant Secretary to the FJC
Paula Adshead, Local Family Justice Council Liaison Manager

Apologies:

Annabel Burns, DCSF
Jane Craig, Family Solicitor (Private Law)
Carolyn Hamilton, Office of the Children's Commissioner for England
Keith Ingham, Welsh Assembly Government
Sara Kovach Clark, Legal Services Commission

Jeremy Oppenheim, Borders and Immigration Authority
Rosalyn Proops, Paediatrician
Khatun Sapnara, Family Barrister

Announcements

Stephen Cobb QC is not seeking reappointment to the Council on the expiration of his appointment in June 2009 and Dr. Rosalyn Proops has tendered her resignation. Both have been members of the Council since its inception and will be much missed. Their contribution to its work has been considerable. Both have kindly agreed to remain until their successors are appointed. A recruitment campaign will be run shortly to identify replacements. Members were asked to inform the Secretariat of any individuals who might wish to apply who could be sent application packs.

Minutes of the last meeting

The minutes were approved without amendment

Matters arising

Following Sir Al Aynsley-Green's presentation to the January meeting of the Council on the UN Convention on the Rights of the Child, Carolyn Hamilton agreed to provide a document identifying issues the Council could consider further and Keith Ingham agreed to provide details from the Welsh perspective. In the absence of both members, this was put over to the July meeting of the Council.

Lord Justice Thorpe updated the meeting on the progress of the pilot schemes being set up following the recommendations of the Chief Medical Officer's report 'Bearing Good Witness' which seeks to reform the provision of expert evidence in family cases. The Programme Board had met on the 30th March for only the second time. It would be reviewing its terms of reference and had agreed more frequent meetings in line with the meetings of the FJC.

Seven teams have been identified to participate in the pilot of which two are ready to commence; the other five are expected to sign contracts shortly. It is acknowledged that progress has been slow, but as with any major new programme the process of implementation is likely to be time consuming. Dr Simon Tanner, who chairs the Programme Board, will attend the July meeting of the FJC.

There were no other matters arising.

Local Family Justice Councils/Programme for the Conference on 27th April

The programme for the annual LFJC conference was circulated to members.

Arrangements are expected to be in place shortly for the transfer of the training budgets for the local Councils to the control of the national FJC secretariat. Governance arrangements will be put into place and guidance will be issued to local councils. It is intended to arrange for the issue of Government Purchasing Cards to the administrators who will then be able use them to make necessary payments for events. The Secretariat will be able to allocate funds and monitor expenditure. Provisions for those local councils which currently make a profit will be agreed.

Family Justice in View

Sally Field updated the Council on the preparations for media access to the family courts coming into effect on the 27th April 2009. Court staff have received training and leaflets and posters have been circulated to the courts to provide information for staff and court users.

Despite some misunderstanding about reporting restrictions, family proceedings will remain private and s12 of the Administration of Justice Act 1960 will continue to apply. The position around reporting restrictions will be reviewed and it is hoped that time will be found in the next parliamentary session for necessary primary legislation.

The Justice Secretary is keen to ensure that press attendance in the family courts becomes the norm and that the work of the family courts is seen.

The Council expressed concern about possible delay to cases if applications to report were made or if a judge allowed press attendance despite the objections of parties to the case. It is not the Ministry's policy intention that cases should be adjourned but it would be difficult to refuse parties the right to appeal should they wish to do so.

Adoption and placement proceedings will not be open to press attendance and this will bar attendance to final hearings in care proceedings which are being heard concurrently. Arrangements are being made for an information pilot in which anonymised judgments will be put on line available to the general public.

The Ministry of Justice will gather feedback from courts on attendance by the media. An on line survey programme will be available for court staff. Feedback will also be sought from the judiciary and practitioners' organisations and a central contact point at the MoJ will be identified for particular issues and queries that arise. There is currently no potential for an IT solution to record cases where the media are present. Members expressed concern about the lack of detailed

information and suggested that service users should be approached for their views. They also suggested that the leaflets informing parties about press attendance should be sent out with papers when they are issued.

Members drew attention to the limited facilities in court buildings and the lack of availability of private rooms for discussion. Posters in court buildings will warn court users that it may be possible for private discussions to be overheard and will show the press accreditation card which media representatives will need to display. In view of the lack of privacy, advocates will need to be alert in order to protect and support their clients.

It was suggested that it might be useful for local Family Justice Councils to hold meetings with their local press to resolve any potential issues.

The Council continues to be concerned about privacy issues arising from media attendance in family courts.

Paper on parties to family proceedings who lack capacity

Members expressed their gratitude for the work done by Elaine Laken and Helen Clift on best practice guidance relating to public law proceedings. The draft paper had been discussed at meetings of the Parents and Relatives Sub Group and the Safeguarding Committee and a revised document was circulated to the meeting and further comments invited. It was noted that this issue is not exclusive to public law and it was agreed that discussions should take place between the Children in Families, Children in Safeguarding Proceedings Committee and the Parents and Relatives group. The issue can also arise in private law and where parents consenting to placement etc. outside proceedings who may not have capacity.

The paper will be circulated to the relevant committees and comments should be directed to HHJ Newton with a view to a revised document being presented to the June meeting of the Children in Safeguarding Proceedings Committee and subsequently approved by the Council at its July meeting.

The Family Justice Board

Sheridan Greenland informed the Council that the Family Justice Board had evolved from the Ministerial Group on Care Proceedings. The Board will have a remit across the spectrum of family justice; although in the first instance will concentrate on children cases. Term of reference will be agreed at its meeting on the 18th May. It will be ministerially led. The relevant departments and agencies, including the judiciary are represented and following the recommendations contained in Lord Laming's report it is likely to expand its membership to include

officials from other relevant departments such as the Department of Health. The Family Justice Council provides advice to government and the Board is likely to be an appropriate recipient of that advice. The Board may also wish to refer matters to the Council.

The Board will also have responsibility for performance. It was noted that in some areas LFJCs are being involved in performance issues, but, unlike LCJBs, LFJCs are not delivery bodies. Following Lord Laming's report, the appropriate local level method of dealing with delay will need to be considered. The Family Justice Board will have cross agency representation which will enable it to be aware of conflicting demands across the system.

Lord Laming's Report on safeguarding

The Government's formal response is expected at the beginning of May.

Recommendation 57 is for the establishment of a system wide target that lays responsibility on all participants in the care proceedings system to reduce damaging delays in the time it takes to progress care cases where these delays are not in the interests of the child. The announcement from government will concentrate on the process for establishing that system wide target.

The 40 week target for care cases is due for review in April 2010. The Council considered that the review should take into account the fact that targets cannot distinguish between 'good' and 'bad' delay and the introduction of some subtlety would be welcome, although it is recognised that even if a case ultimately is resolved well, delay can continue to be damaging. There remains concern about the accuracy of judicial statistics on the number of care cases which are at variance with those collected by the Legal Services Commission. It was suggested that the Family Justice Board should approach Professor Masson for assistance on statistical information. The setting of cumulative targets, which consider how long each element should take, should be considered. A realistic view on resources available needs to be taken.

The Safeguarding Committee will discuss the report at its next meeting and Sheridan will speak at that meeting.

With reference to Recommendation 58, Francis Plowden has been appointed by the Government to undertake the review of court fees and is expected to report by the autumn. The Council will invite him to attend a meeting of the Safeguarding Committee.

The consultation on private law court fees is expected to be issued during Spring 2009.

Family Legal Aid Funding

Stephen Cobb QC gave a summary of the background to the consultations issued by the LSC. He noted that the time for response to the consultation on Family Legal Aid Funding from 2010 had been extended to allow data issues to be resolved. The data on which calculations were based was now considered to be more accurate. The Council expressed disappointment that the LSC had not brought the data issue to its attention. The LSC has set up a working group to advise on the structure of a new scheme and this will meet in early June and the response to the consultation is expected to be published at the end of July/beginning of August. Ernst and Young economic research on delivery of advocacy is due to be published around the same time.

The consultation was one of four to which the Council had responded in the last few months. There is grave concern on the part of many solicitors about their capacity to continue with work. Specialist firms are vulnerable and may have to give up the work if required to do a certain number of matter starts. It was noted that many firms are already providing a subsidised service and will not be able to continue to do so.

By the time the Council meets in July there should be a clearer view about Family Advocacy. It was agreed to ask NYAS to provide details for the July meeting about their current position. Any diminution in the service provided by NYAS will increase the existing pressure on Cafcass following the Baby P case and an increase in the number of appointments under r9.5.

The Council also wishes to understand why monies raised from the statutory charge are not used to provide funds for family legal aid work and the LSC will be asked to provide information on this for the next meeting.

The Council expressed its gratitude to those members who had worked on the responses to the LSC consultations.

Funding for Research Project

The Council agreed to fund Professor Ireland for her proposed small research project on psychologists' reports. Dr. Gillett will speak directly to Jane Ireland. Wider questions on the appointment of psychologists as expert witnesses will be referred to the Experts Committee.

Dartington Conference

The programme was approved by the Council, although it was suggested that the involvement of service users might provide an additional element. This, together

with the methodology for reporting back the conclusions of the conference will be discussed at a further meeting of the steering group.

Young People's Group

Christine Smart has met with RAPP (Representation and Participation Project) and it has been agreed that around 16 young people will be brought together to form the consultation group who will have a mix of public and private law experience. There will be four consultations per year on a Saturday with representatives from the FJC and the group will also undertake ad hoc short consultations. The group would also be able to attend FJC specified national events. It was agreed that the working agreements would be finalised so that the work could commence. There may be some issues about diversity given the local demographics but the Council considered that it should be possible to involve appropriate children and young people from outside the area to address the issue.

Business Plan

A report on the progress under last year's business plan, together with a draft plan for 2009/10 was considered. Members are asked to submit their comments by 11th May, to enable the report to be placed on the FJC website and the new plan to be submitted to ministers for approval.

Reports from Committees

Executive

The Executive Committee has continued to undertake its management role. It has given initial approval to funding the research project proposed by Professor Jane Ireland and John Pinschof and has approved the proposals from the Diversity Committee for the forum to take place in June. It has approved the setting up of a contact list of organisations which may be interested in aspects of the FJC's work, to whom the Secretariat will send minutes of meetings and has agreed that in future consultation documents to which the FJC is asked to respond will be sent out to Committee chairs for them to identify those who may be asked to provide responses.

ADR

Beverley Sayers will be speaking at the LFJC Conference about ADR and encouraging LFJCs to set up their own ADR committees. The committee continues to work with Cafcass on the Working in Partnership paper. 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.

Children in Families

The Committee has been following progress following the implementation of the provisions for contact activities of the Children and Adoption Act 2006, which came into force in December 2008. Having received briefings from DCSF officials, members of the Committee will be providing articles for various specialist publications to assist in dispelling confusion that has arisen about availability of services. The Committee contributed to the FJC's response to the LSC consultation on Family Legal Aid funding and will meet in May to discuss private law fees.

Children in Safeguarding Proceedings

At its last meeting the Committee received a presentation from DCSF officials on the future of the Independent Reviewing Officer function. New guidance is being formulated by DCSF to which the Committee hopes to contribute. The Committee contributed to the response to the LSC consultation mentioned above. The Committee is considering how best it can contribute to the Key Partners group of the Social Work taskforce. It plans a joint meeting with the Parents and Relatives Group possible in June and it will be monitoring closely the effects of the new provisions for admitting the media into family courts.

Diversity

The Committee held a meeting in Birmingham on 30 March as part of its series of out-of-London events. It was attended by representatives of the local FJCs from the surrounding area. The meeting looked at issues raised by the local representatives including mediation, culturally-appropriate psychological assessments and the use of experts in the family courts. A meeting was held with HMCS and the LSC in March on the provision of interpreters in family courts. The Committee will use the information that came out of the meeting to inform its work on promoting more consistency in the use of interpreters. Work is continuing on arrangements for a forum on domestic violence for Community Groups, to be held at the House of Lords on 17 June.

Domestic Violence

The Domestic Violence working group will be responding to the Home Office consultation 'Together we can end violence against women and girls'. It will also address the confusion that continues to arise concerning public funding for domestic violence cases through articles in various publications including, the MoJ DV newsletter, and periodicals directed at solicitors and voluntary organisations and LSC staff. The group will also be working on a draft protocol

for process servers which can address the problems around reaching the required criminal standard of proof of service of orders. It will also revise the Domestic Violence section of the FJC website.

Education and Training

The Committee has finalised the Mapping Exercise on training for the various disciplines in the family justice system and this is now on the FJC website. The Committee has also been updating the guide to the family justice system on the website and this should be ready for the new website launch in June 2009. The Committee has established links with Social Care Institute for Excellence (SCIE) and will be liaising with them to see if there is scope for input into their current programme.

Experts

The Experts Committee is continuing to work on the question of disclosure of documents to the General Medical Council in cases where there has been a complaint about an expert. It is also considering whether there is a need for guidance or regulatory clarity in the use of overseas experts and has consulted with some of the Family Division Judges. It will also consider whether there is scope to provide a feedback mechanism to experts on the quality of their evidence and the implications of the need for Criminal Records Bureau checks for self employed experts. It continues to take a strong interest in the implementation of the provisions of the Chief Medical Officer's report 'Bearing Good Witness'.

Money and Property

The Money and Property Committee continues to follow the progress of the Co-habitation Bill currently in the Lords and remains interested in the progress of the Scottish legislation on cohabitants. Work on the good practice guide for financial proceedings continues. At its next meeting in May, the Committee will consider the issue of financial disclosure in proceedings.

Parents and Relatives

The group held its first full meeting in March. The meeting focussed on public law issues and was attended by two service users. Topics discussed included various documents which have been produced to provide information for parents, including a draft pre proceedings pack produced by the MoJ, guidance on best practice on representing parents who lack capacity, and the guidance document currently being used in the Birmingham courts.

Voice of the Child

The sub-group is working to produce short and simple guidance for the President's approval, to be used by judges when speaking to children and young people. It will also form the basis of interdisciplinary training events. The group has met with RAPP (the Rights and Participation Project) in Hull in order to forge links with a new young people's reference group.

Date of next meeting: 6th July 2009 10:00am Clive House.