



**Family Justice Council
Minutes of the meeting held on the 25th January 2010**

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' Courts
Katherine Gieve, Family Solicitor, Public Law
Elizabeth Gillett, Clinical Psychologist
Nick Goodwin, MoJ
Teresa Hallett, CAFCASS Cymru
Carolyn Hamilton, Office of the Children's Commissioner for England
Sara Kovach-Clark, LSC
Bridget Lindley, Consumer Focus, Parent Representative
Professor Judith Masson, University of Bristol
District Judge Marilyn Mornington
Her Honour Judge Lesley Newton
The Honourable Mrs Justice Parker
Dr. Heather Payne, Paediatrician
Deborah Ramsdale, Staffordshire County Council
Alison Russell QC, Family Barrister
Khatun Sapnara, Family Barrister
Beverley Sayers, Family Mediator

Alex Clark, Secretary to the Council
Joanna Wilkinson, Assistant Secretary to the Council
Paula Adshead, Local Family Justice Council Liaison
Daphna Wilson, Secretariat

Apologies

The Right Honourable Sir Mathew Thorpe
Keith Ingham, Welsh Assembly Government
Christine Smart, Cafcass

Observers:

Lesley Baker, Lambda Mediation
Paul Bishop, Trade Union and Professional Association for Family Court and Probation staff
Jeff Botterill, Families need Fathers
Janet Bowen, Named Nurse for Safeguarding Children
Luciana Coffey
Bruce Edgington, Solicitor
Christopher Gray, Training manager for court work, Norfolk Children's Services
Teresa Hartley, Registered Social Worker
Rupert Holderness JP, Family magistrate
Kirsten Naudé, National Family Mediation
Nicky O'Shaughnessy, Social Worker
Arran Poyser, Self employed consultant

The Chair welcomed all present to the first meeting of the FJC in 2010 and the second open meeting of the Council. By way of introduction, he noted that the Family Justice Council was established in 2004, as an outcome of the responses to the then Lord Chancellor's Department's 2002 consultation on 'Promoting Inter-Agency working in the Family Justice System'. The Council is a non statutory, advisory non departmental body, sponsored by the Ministry of Justice, and its primary role is to promote an inter-disciplinary approach to family justice, providing advice to the government on reforms necessary for continuous improvement. The Chair noted that much of the Council's time is necessarily spent responding to consultations but it is also able to take the initiative in producing papers and advice, although it cannot spend as much of its time as it might wish to on this. He mentioned the work of the 39 local family justice councils throughout England and Wales and the contribution they make.

As part of its commitment to open working, the Council posts minutes of its meetings on its website and this is the second open meeting it has held.

Announcements

The Chair welcomed members of the Council attending for the first time: Mrs Justice Judith Parker, who joins the Council to replace Mrs. Justice Eleanor King, and Alison Russell QC who joins to replace Stephen Cobb QC.

Minutes of the last meeting

These were approved without amendment.

Matters arising

Media attendance in the family courts

The Council hosted a debate on the 9th December 2009 at which speakers included solicitor Sarah Harman, BBC radio journalist Sanchia Berg, child psychiatrist Dr. Mike Shaw and Alex Verdan QC. A panel discussion followed. The event was extremely well attended and details are on the FJC website.

<http://www.family-justice-council.org.uk/764.htm>

The Children Schools and Families Bill, in which the provisions for extending reporting of family proceedings are contained, had its second reading on the 11th January and the Chair noted that he, Nicholas Crichton and Dr. Julia Brophy had given oral evidence to the Public Bill Committee on the 21st January, together with the Chief Executive of the Society of Newspaper Editors. The Committee had been particularly interested in the balance between confidentiality and the right to report and privacy. He noted that the MoJ was continuing to hold stakeholder meetings to discuss the provisions in the Bill. Nick Goodwin informed the meeting that the focus now was on the parliamentary aspect and the Bill was currently in its committee stage which would continue into next week. Martyn Cook asked if there was any indication of a likely implementation date and Nick said that he expected to be able to provide an outline for the next meeting. The Chair explained that it was not the intention to implement the provisions until the rules needed to provide the detail to general statements of principle are in place. Heather Payne mentioned the anonymised judgment pilot which has just begun in three pilot areas: Leeds, Wolverhampton and Cardiff, and which allows the public to read judgments in family cases on line.

Lord Laming's report and the government response

Francis Plowden's report on court fees is yet to be published; it is currently with Ministers. Judith Masson expressed the strong concern of the Council at this delay. She reminded members that Mr. Plowden was asked to report by September 2009 and said that in the light of the criticism about the changes to public law fees, a change she considered to have been rushed through, the delay in publishing the report was disturbing.

Nick Goodwin reported that drafts of the system wide target proposed by Lord Laming are being prepared and discussed and it is hoped that they will shortly be available for open consideration. There are a number of bodies concerned in the preparation of these system wide targets: including the LSC, Cafcass, the local authorities and the courts system. HHJ Newton expressed concern at the suggestion that local Safeguarding Children Boards will be responsible for managing targets, as she considered them not to be the appropriate bodies. No alteration is proposed or suggested to the Public Law Outline (PLO) as a result of the system wide target. The PLO is currently being revised only in so far as its documentation is concerned and its primary concern remains the timetable for the child. District Judge Mornington expressed concern at the possibility of any targets being met, when there was no further judicial time provided to deal with a system that was already swamped with cases. Members acknowledged that the principle of a target is helpful as it assists in concentrating thoughts of those involved in the case, but agreed resources were needed to meet it.

Proposed reform of s41 of the Children Act 1989

Members recalled the discussion at the previous meeting on the proposal to amend s41 to replace appointments of named guardians in specified proceedings with the appointment of Cafcass as a corporate body. This provision had not, ultimately, been included in the Bill and the Council awaits further developments. The recently announced review of the family justice system will include Cafcass {the terms of reference refer to 'examination of the roles fulfilled by all of the different agencies and professional in the family justice system, including consideration of the extent to which governance arrangements, relationships and accountabilities are clear and promote effective collaboration and operational efficiency'} and it is assumed that this will be one of the topics under consideration. Teresa Hallett noted that CAF/CASS Cymru intends to maintain the status quo and does not envisage changing its practice.

Cafcass: way forward following the President's Interim Guidance

The Chair reported that a questionnaire collecting baseline data had been completed in seven areas by the designated family judge, Cafcass and HMCS to enable a review to take place in February. Discussions have taken place with the President's Development Board. It seems apparent that while there has been a marked improvement in some areas, it has not been seen everywhere. The President's Interim Guidance is likely to be renewed for a further six months and if work continues at the same rate long term, the outlook is not promising. The President invited the Children in Safeguarding Proceedings Committee of the Council to consider the matter and make representations to him. He was sure that this would be a topic for consideration by the Family Justice Review.

On behalf of the DCSF, Annabel Burns reported that the Cafcass data showed high demand with no prospect of a dip. This would be fed in to the Family Justice System review. She indicated that the DCSF wanted to hear from a wide range of stakeholders and would welcome the input of the FJC. District Judge Mornington commented on the demoralisation of Cafcass officers on the ground; she said that many were leaving the service, expressing a lack of faith in senior management. Nicholas Crichton said that a recent event at the Inner London Family Proceedings Court attended by Cafcass officers and lawyers had been a depressing event, and he considered that this was not a short term problem, but a template for the long term. He feared that the emphasis on safeguarding had meant a loss of the welfare service. Khatun Sapnara referred to the survey of independent guardians carried out by NAGALRO which indicated the range of problems. She said that in some areas the current interim arrangements were not being adhered to and extending the interim guidance would not necessarily work. Teresa Hallett reported that in Wales, although the service faced huge pressures and budgetary constraints, the situation was much better. Beverley Sayers drew attention to the lack of information about mediation, particularly on the Cafcass interactive website. She hoped this could be addressed to provide people with better information about the availability locally of mediation services, and suggested that local FJCs might be asked to provide information.

The Chair said that he was concerned to hear the interim guidance was not being followed but he had received reports from judges to suggest that there had been improvement. He shared the Council's concern that there were no proposals beyond the interim guidance and considered that this was likely to continue until the matter was taken up by the Family Justice System review. However, in the meantime he was responsible for keeping the system going and the interim guidance sought to achieve that. Khatun Sapnara commented that despite acute problems in London, the duty scheme had been helpful. However, independent guardians had at one stage been told there was no funding for them to take on cases, and then, when extra funding was made available, the guardians were not, having made alternative arrangements. Annabel Burns indicated that she was anxious to hear about cases reaching the Case Management Conference stage without guardians. She explained that an extra £1.6 million had been made available for London but most independent consultants did not choose to take on the work. Martyn Cook pointed out that the Family Justice System review would be long term and he feared the consequences in the interim. Something needed to happen now to support children. Khatun Sapnara said that lawyers were not absolved from the responsibility of asking about dates of appointments of guardians but Katherine Gieve felt that often Cafcass was simply not in a position to appoint a guardian. Marilyn Mornington pointed out that in addition to the needs of the children involved in these cases, many parents were being denied contact for long periods due to delay in cases. Nicholas Crichton commented that at a recent meeting he had been told that Cafcass would never get back to the previous standards and he found this profoundly depressing. Lesley Newton commented that although the problem was acute in London, the situation was better in Manchester.

Guidance on shared parenting

Following the previous Council meeting, the Children in Families Committee had discussed the draft guidance at its last meeting, which was attended by Bruce Clark, Director of Policy at Cafcass. The Chair of the Committee had subsequently written to Bruce Clark to express the Council's concerns including their view that 'shared parenting', which is not a term of art and has no legal meaning, is often used when what is meant is 'shared residence'.

There were no other matters arising which were not agenda items

Questions from observers.

The observers at the meeting had been offered the opportunity to ask questions in advance and have them responded to at the meeting:

Christopher Gray: To what extent have the objectives of the Public Law Outline been met and does the Council feel that the changes made should be either enhanced or retracted?

Professor Judith Masson responded on behalf of the Council:

The MoJ commissioned an early evaluation which was too limited and too early to provide useful data on the operation of the PLO. Other monitoring work by the LSC has provided limited data about take up of level 2 legal advice for the pre proceedings stage. Monitoring data suggests that delays continue, which is not surprising given the bulge in applications in the second half of 2008, increases in application numbers in 2009 which has put all aspects of the care proceedings system under pressure. Thus more information is necessary before we can reach well-grounded conclusions about which parts of the PLO are working, which need further attention and what changes are required. Further research is being undertaken, funded by the Economic and Social Research Council into the operation and effectiveness of the pre-proceedings system which will provide the in depth analysis necessary for this most radical part of the PLO scheme.

The Council had cautioned against the rapid implementation of the PLO and criticised the limited involvement of practitioners lawyers, social workers/ managers and Cafcass guardians/ managers including from CAF/CASS Cymru in the development of the PLO. It does not think that further changes should be introduced before there is better understanding of the system, with the possible exception of amendment of some of the documentation which is generally regarded as burdensome to complete and unhelpful to the process it is intended to support.

The President stated that work was underway to review the documentation to address the concerns about the degree of prescription and the amount of repetitive information. It is expected that this will be replaced with an obligation to file the key documents and to hold the others available for disclosure on request.

Mr. Gray commented that such changes were likely to be universally popular.

Philip Measures:

I am deeply concerned at the 'direction of travel' of Cafcass with the agreement, albeit less than wholeheartedly given, by the President of the Family Division in response to its current critical situation.

Cafcass appears quite unclear as to its understanding and reaction to Private Law matters (where there is often no established 'threshold of significant harm' under the Children Act 1989) where it carries out a range of Police checks without the specific informed consent of

Parties and regardless of whether there are any 'welfare' concerns evident – and even where there are none at all.

By an increased move to 'telephone screening' and never seeing children prior to First Hearings Cafcass has become more akin to a 'Contact Centre' approach than a service directly accessible to the general public.

Should not Family Law matters be responded to more proportionately on the basis of clearly identified risks (evidence-based) and with the fullest consent / openness of those it is working with? Minimal State intervention in family life seems not to apply to families where Cafcass becomes involved in Private Law Applications and the Family Courts do not always appear to understand the need for 'threshold criteria' to be met before making Orders in the absence of clearly defined risks / safeguarding issues.

In the absence of Mr. Measures, the President noted that much of the earlier discussion under matters arising had covered the problems concerning Cafcass. In addition the following reply was made to Mr. Measures:

The Family Justice Council supported the introduction of safeguarding checks in private law cases across Cafcass and CAF/CASS CYMRU and indeed, was active in lobbying for the resumption of such checks when they were discontinued by Cafcass in England in 2008. The Council considered that this was a matter of child protection and that the checks were and are needed to ensure that relevant information is placed before the courts before decisions on residence and contact are taken. It noted findings from research that a significant proportion of private law cases in which no risk of harm was indicated on the C1 did, in fact, involve significant issues of potential harm. (Domestic Violence and the Supplemental Information Form C1A: Aris and Harrison December 2007). The Children in Families Committee of the FJC participated in consultation with the MoJ on the new C100 form and supported the inclusion of wording to make it clear that safeguarding checks would be carried out as necessary. It also commented on the information included in the CB1 leaflet giving guidance on making an application.

The Children in Families Committee participated in the brief consultation exercise on the Private Law Programme and was supportive of the proposals therein.

Rupert Holderness:

How does the Council view the current difficulties with assigning children's Guardians to children involved in court proceedings?

HHJ Lesley Newton, Chair of the Children in Safeguarding Proceedings Committee, responded on the Council's behalf:

The Children in Safeguarding Proceedings Committee has discussed the problems on a number of occasions and views delays in appointments with great concern. The FJC receives regular updates from Cafcass on its position. It was consulted on the President's interim guidance and will discuss the position further in the CSP Committee when the issue of what is to happen after March 2010 will be considered.

Much of the earlier discussion under Matters Arising was relevant to the question. Further discussion about how to prioritise cases followed; the President explained that in many areas the Designated Family Judge and the Cafcass manager had between them examined and prioritised cases. Katherine Gieve and Nick Crichton agreed that Cafcass should liaise with Children's solicitors who have good knowledge of cases and can provide advice on the needs of the case.

Shaun O'Connell

What percentage of children are returned to their biological parents – figure we have been given is 6% and does the Council think this is too low given that 42% are returned in the USA?

Mr. O'Connell was unable to attend the meeting and the detailed response provided is attached to these minutes. In a brief response at the meeting, Professor Masson commented that the statistics showed that the number of children returned was in fact much closer to the United States figure and that without the source of the 6% figure she could not take the matter further. Other statistics that had been supplied were actually for ongoing cases, on which no conclusion could be drawn and therefore the Council could not agree the figures provided by the questioner.

The DCSF data for 2008 (found in the *First Statistical Release* publication and on the DCSF website) indicates that, in 2008, 24,100 children ceased to be looked after by a local authority. Of these, 9,500 returned to live with parents or relatives, 880 left care on becoming subject to a residence order and 1,120 left when a Special Guardianship Order was made. Research indicates that most residence orders are granted to a parent; SGOs cannot be made in favour of a parent but almost all are to relatives, including relatives who have acted as foster parents. Overall then approximately 10,380 returned to live with a parent and 1,120 moved or stayed with a relative when they left care. In addition 3,400 moved to independent living and 470 transferred to care provided by adult social care – i.e. they reached age 18 but continued to require full-time care because of profound disabilities. Thus 43% returned to parents the care of 5% became the legal responsibility of relatives and 14% became independent. These figures are very different from the figure of 6% (source not given) which the questioner suggested reflected the proportion of children returned to parents from care. The questioner is referred to Sinclair et al for a more detailed analysis of the care population in England.

Comparisons between care systems in other jurisdictions are tricky – language differences can mean that similar terminology masks differences and both structural and demographic differences mean that the care system deals with different populations and in different ways. For example, the maximum age for being in care may be higher or lower and children in criminal justice placements may be included or excluded from the care population. In addition there are major differences in the ways data are collected and recorded. For this reason simple comparisons of proportions have to be treated with caution and major international studies are conducted to help those responsible for policy in different jurisdictions learn from experience elsewhere. Nevertheless, the figure from the Chapin Hall review, *Foster care Dynamics 2000-2005*, provided by the questioner shows (table 8.1) that 41% of children entering care between 2000 and 2005 were discharged to their family during that period. These data are based on data for a sample of 11 States in the USA. Overall the use of substitute care in the USA is higher than in England with approx 24 children per 10,000 in the case system compared with approx 18 per 10,000 in England.

As far as the figures from Portsmouth are concerned, the questioner has misread the table which he obtained under FOI and provided to the FJC. There were not 43 children subject to care proceedings in 2009 adopted in that year – these are all recorded as ongoing cases.

Mr. O'Connell had asked a supplementary question:

What hard evidence is there that children would be harmed by having fully open Courts and does the panel, in light of the reticence of the Family Division even to open to the media, think this is not justified given open Appeal Courts, criminal Courts and children are regularly named and shamed in media for ASBOs and truancy?

In response to this question, Sue Berelowitz noted the work of the Interdisciplinary Alliance formed to protect the interests of children. She said that a comparison should not be drawn with the criminal or youth courts, since in family courts children were not involved because of any action of their own. It was noted and agreed that appeals were held in open court, but appeals in these cases were comparatively rare and in any event, the Appeal Court was dealing with cases at a level of abstraction at which it was unlikely that detailed accounts would be revealed. She said that evidence about harm was largely anecdotal, and cited a number of examples:

- historical case of girl (now a young woman) whose mother had very serious mental health problems. Case predates current transparency arrangements but details were reported extensively albeit anonymously, in the local and national press and she was identified. Her life was made a misery and as a result and she never returned to school because of severe bullying. Is still suffering the aftermath and needing extensive support to cope.
- verbal report from high court judge about 2 children, one in public and one in private law proceedings, whose cases were reported anonymously but they were nonetheless identified by their fellow school pupils. Both were severely bullied including an attempt to set fire to one girl. The care placement broke down for this girl and she had to move both home and school. The other child also had to move school.
- report from a high court judge regarding a boy who disclosed sexual abuse. On the way to do his Achieving Best Evidence interview he was informed that when his case came to court, there may be reporters present who will hear the evidence and may publish the case details though will need to do so anonymously. Boy then refused to make any disclosures at the formal interview. In the car on the way back to his foster carer, he made further disclosures.

She also noted early results from the work being undertaken by Dr. Julia Brophy at Oxford University, on behalf of the Children's Commissioner, to obtain children's views. The overwhelming message is that children do not want the details of their cases publicised. She reiterated that the welfare of the child is paramount and their Article 8 rights need to be protected.

Jeff Botterill

How often are Parenting Information Programmes (part of enforcement measures) being directed by Courts and in what circumstances? These PIPs would appear to be positive and helpful measures, do the FJC agree?

Teresa Hartley

With regard to Strategic objective 5(5) are there any revised views on the content and quality of 'contact activities' and how families on low incomes can benefit from these?

These two questions were answered together.

Annabel Burns noted that referrals to PIPs had been rising steadily throughout 2009:

In quarter 1 there had been 20; quarter 2, 170; quarter 3, 200 plus; and in quarter 4, over 400. Following attendance at PIPs many parents had gone on to mediation. There is broadly national coverage for PIPs and although it is too soon to conduct a full evaluation, feedback from service users across the county is very positive; anecdotal evidence from providers suggests positive behaviour change of those participating. In October 2009, Cafcass sent information packs to courts and practitioners across the country, promoting PIPs and Mediation, including full lists of providers and referral process guidelines and information and activity booklets for parents.

Around 91% of activities are being funded, either through public funding or through the hardship fund administered by Cafcass

It is accepted that there is still not nationwide coverage for the Domestic Violence programmes but Respect is being funded to develop services. The position is similar in Wales, where providers are continuing to be commissioned.

Jane Craig, as the Chair of the Children in Families Committee said that the FJC has been supportive of contact activities and has actively sought to publicise and promote their use. It has been concerned at the low rate of take up and has encouraged wider publicity. It hopes that the local Family Justice Councils will be able to assist in this and is aware that this is already happening in some areas.

Jeff Botterill said that Cafcass was increasingly engaging with fathers in England, although he did not think that the position was the same in Wales. Teresa Hallett responded on behalf of CAF/CASS Cymru to point out that a representative of FNF is a member of their advisory group and that the organisation was actively engaging with FNF.

Gillian Macdonald:

How does the council believe recent policy and legislative developments have impacted, in practice, on the inclusion of issues of domestic violence and children's views about violence they have been exposed to as part of the assessment regarding a child's welfare in private family court proceedings?

On behalf of the Council, Khatun Sapnara responded:

Recent initiatives have built upon the judgment 10 years ago in the reported cases of *Re L, V, M & H (Domestic Violence and Contact)* [2000] 2FLR 334. This took into account expert evidence from two eminent child and adolescent psychiatrists Dr Claire Sturge and Dr. Danya Glaser about the impact upon the welfare of children when exposed to domestic violence.

Since then there have been a number of significant developments recently (in which the FJC has been instrumental)

- The President's revised private law programme
- Amendments to the Children Act 1989 to expand the definition of harm to children to include impairment of health and development from witnessing or hearing the ill-treatment of another
- New Form C100 and revised form C1A
- Revised President's Practice Direction: Residence and Contact Orders: Domestic Violence and Harm (14th January 2009). (Arising out of FJC report in response to Wall J's response to Women's Aid report on 29 homicides)

- Major emphasis on safeguarding in Cafcass practice
- Much improved understanding and training of judges, Cafcass, lawyers and other professionals has led to DV and children's view on violence (and the impact of it on them) being more widely regarded by the courts.

There is no empirical data/research on the implementation of these initiatives. The FJC relies on anecdotal experience of practitioners for the response to the question posed. Individual practice varies but appears that there have been significant positive improvements to the way that family justice system approached and manages issues of domestic violence and the voice of the child in private law proceedings. In particular:

- Early identification of domestic violence issues
- Intervention in a planned, structured way with better information sharing between agencies in the family justice system
- Better information gathering and recording of information, including admissions and findings of fact
- Far more finding of fact hearings
- More orders for psychological assessment of perpetrators
- Better more detailed and child-friendly assessment of children their welfare needs and wishes and feelings.
- More referral to DV perpetrator and victim programmes
- Emphasis on court scrutiny of consent orders.
- Courts more prepared to make no order for contact at an early stage, sometime after receiving details of the child's wishes and feelings.
- Greater regard to safety of adults and children under interim arrangements, pending final hearing of fact finding hearing
- Attention to special arrangements to keep adults and children safe at court

Problems identified:

- Delay in securing fact finding hearings
- Fact finding hearings being fixed without sufficient consideration for the need to do so.
- Extra work for Cafcass, therefore delays in providing reports.
- Delay in contact commencing
- Lack of children's services to deal with consequences of domestic violence such as counselling and therapy
- Problems in ensuring judicial continuity
- Delays in appointment of Rule 9.5 Guardians in complex/serious cases with attendant implications for case progression.
- The improvements noted are base upon the implementation of new measures/initiatives already outlined, in particular:

President's Revised Private Law Programme

The main aims include the need to resolve issues in individual cases and promote outcomes that are sustainable and are in the best interests of children and take account of their perspectives and also ensure risk identification followed by active case management. It explicitly provides for

- Acceptance that court orders, even those made by consent, must be scrutinised to ensure that they are safe and take account of any risk factors
- Cafcass duty to undertake risk assessment where the Family Court Advisor suspects a child is at risk of harm
- Awareness of the importance of involving children where appropriate in the decision making process

- Cases are listed 3-4 weeks from issue and sent to Cafcass for Screening

President's Practice Direction: Residence and Contact Orders: Domestic Violence and Harm (Revised 14/01/09)

Provides that where DV is raised as an issue, the Court must at all stages consider

- Early identification of factual and welfare issues involved
- Consider the nature of any allegation/admission or allegations capable of being proved and whether these are relevant in deciding orders for residence and contact and if so, in what terms, consider impact on conduct and outcome of proceedings.
- Give directions to enable relevant factual and welfare issues to be determined expeditiously and fairly
- Courts to scrutinise consent orders, retain control of cases and carefully scrutinise applications for withdrawal of proceedings especially when parties are not attending court.
- Send copy of application to Cafcass upon issue for initial screening in accordance with safeguarding policies
- Any admissions/findings to be recorded and sent to Cafcass
- Special arrangements for safety of party/child attending hearing
- Judicial continuity for fact finding and welfare hearings
- Risks to adults and children in interim period
- Need for expert evidence, social work/ psychiatric/psychological or other assessments of any party or child
- Facilities available locally to assist any party or child where DV has occurred
- Any treatment/advice as pre-condition to a contact order
- Assess risk of likely harm
- Secure physical and emotional safety of the child

Cafcass

Appointment of Family Court Advisor to all new cases 3 part mandatory training for FCAs on DV practice

Safeguarding framework early screening for DV (enquiries and checks with Local Authority and police) takes place within days of receipt

FCAs read papers, make phone calls to parties to probe for any issues of DV

If the child is vulnerable immediate referral to Local Authority

If risks are identified may meet parties separately before first hearing

Attend first directions hearing. Notify and highlight concerns to Court (Written Form – Schedule 2) Safeguarding issues are not privileged.

No inappropriate pressure to agree order by consent

Advise if fact finding hearing required/or referral to dVIP

Will see child depending on maturity of child and other circumstances.

Wishes and feelings of the child

Cafcass DV toolkit provides that the following questions are addressed

Is the child aware of the proceedings?

How are the wishes and feelings of the child to be ascertained (if at all?)

How is the child to be involved in the proceedings, if at all and whether at or after the first hearing

Need for separate representation pursuant to Rule 9.5 FPR and Practice direction

Who will inform the child of the outcome of the case where appropriate?

How orders can be administered in a child-friendly way

Emphasis on understanding how a child may communicate problems and experiences of DV and to be alert to indications in children's non-verbal communications such as exploring through drawing and play; not treating child as a witness but focus on assessing child's wishes and feelings and to understand his/her reality of the situation; seeing child alone without influence of parents and siblings in an environment in which they feel safe; allowing children to tell their story in a way in which he/she is comfortable need for support for diversity issues such as interpreters.

Luciana Coffey

Why do children who have been sexually abused by their parent not have *automatic* protection under family law, yet the children next door will be *automatically* protected from the offender?

On behalf of the Council Nicholas Crichton said it was important to distinguish between the criminal courts and the family courts.

If a person is convicted in a criminal court of a sexual offence they will be punished, presumably with a sentence of imprisonment. They will also be registered on the Sexual Offenders Register, which provides a limited degree of protection for all children, including the victim.

In the family court the priority is the protection of the individual child with whom the court is concerned. If there is an allegation of sexual abuse the court will consider whether it is satisfied that the child has been abused by the parent. If it is so satisfied, the court will put in place measures to protect the child. It can also take steps to protect another child (sibling? neighbour?) from the perpetrator if it is clear that that child is also at risk.

Note: The standard of proof required in the criminal courts is 'beyond reasonable doubt'. In the family courts it is 'upon the balance of probabilities'."

Ms Coffey noted that the onus was on a non abusing parent to take proceedings to limit, for example, parental responsibility of an abusing parent and she wondered whether the onus should not be on the offender to show that they were safe rather than on the non abusing parent to prove they were not.

Mediation

Beverley Sayers spoke to the paper that had been circulated to members: 'Independent Mediation – Information for Judges, Magistrates and Legal Advisers'

The ADR Committee sought endorsement of the paper and hoped that it could be distributed to courts. It was intended to provide general information about the practice that mediators must follow, given the increase in the use of mediation both pre and during proceedings. It should stand alongside guidance for mediators. The Committee would also wish for the guidance to be provided to the JSB and HHJ Newton said that the new private law training for judges will include a section on mediation and this would be included. Judith Masson proposed some minor amendments which she would forward to Beverley, and suggested that the Midlands statement and Resolution document be added as annexes and it was agreed that after some further discussion between Beverley and Bridget Lindley, the amended document could be approved by the relevant committee and then forwarded to judges via the office of the President.

Nicholas Crichton asked whether it was necessary that mediation was always voluntary. Beverley said that this was the subject of debate but a case had to be suitable for mediation and although information about mediation could be made obligatory, the process itself remained voluntary. Although encouragement to parties to participate was very valuable the

process tended to work because of its voluntary and privileged nature. Marilyn Mornington said that it was important to remember that 90% of family disputes were resolved without recourse to the courts. For those that do require court intervention, safeguarding checks were of great value and she was concerned that in those cases that went first to mediation such checks would not be available. Katherine Gieve considered that there should not be too many hurdles in the way of applications to the court and delay had to be avoided at all costs. She said it was important to remember that sometimes contact had been wrongly stopped and this could have a serious impact on children's lives. Access to the court if necessary must be available. Beverley said that mediation should not cause delay and should speed up resolution. Mediation referral must be done quickly or carried out alongside court proceedings. She agreed that if mediation was undertaken prior to court proceedings, safeguarding checks would not be made, but all mediators undertake screening for domestic violence issues and would always ask questions. It was agreed that this would be a topic that would be suitable for referral to the Family Justice Review.

Representing the views of users (liaison between the Parents and Relatives Committee and other committees and groups of the Council)

Bridget Lindley, Chair of the Parents and Relatives Committee, informed the Council that this relatively new committee needed greater dialogue with other committees. As one of the 'cross cutting' groups of the Council it was anxious not to work in isolation and she wanted to flag up its remit so that other committees would refer to it in their own work. Khatun suggested that papers from other committees should be circulated to this committee and to the Diversity Committee so that they could feed into any relevant work. She also suggested that members of the Parents and Relatives Committee could be invited to observe meetings of other committees. Bridget wondered whether there could be a standing item on other committee agendas to remind them of the importance of considering the other committee's views. The Chair noted that membership of committees overlapped and suggested that the Secretariat should consider the matter further and this should be returned to the agenda for the next Council meeting.

Family Justice Board

The Secretary had been liaising with Ministry of Justice officials about a possible relationship between the Council and the Board. It had been agreed that it was as yet too early to produce a meaningful document and more time was needed to allow the Board to 'bed down'. This would be discussed at the next meeting of the FJC Executive Committee. Nick Goodwin noted that the Board would come within the scope of the Family Justice Review. Annabel gave a brief report on the last meeting of the Board, which had discussed data issues and the health of the system. She said that the Board considered that the system was bearing up better than expected under the high demand and recognised the dedicated work of those within the Family Justice System. It also discussed the recently published green paper and the review of the FJS. In answer to a question from Bridget Lindley she said that the membership did not include a service user, but children were represented through the Children's Commissioner.

Voice of the Child: Guidelines for judges

Nicholas Crichton explained that this had come from work done by the Voice of the Child group, whose membership included two young people. The guidelines had been seen and slightly amended by the President. The guidelines did not say that judges must see children but encouraged them to do so in cases where children wanted to see them and provided

them with guidelines as to how to go about this. The Group was anxious to discuss how they could be circulated and publicised. Nick Crichton noted that he will be publishing an article in Family Law, together with HHJ John Platt and HHJ Clifford Bellamy discussing their experience of seeing children.

The Chair said that there were difficulties. Although 4000 extra judicial days had been provided to family justice, anything that would prolong cases was not an option. Some judges were unwilling to see children and this was not the time to require them to do it. There was also a need for training. He had spoken to Mr. Justice Bodey, at the JSB and he was looking into this aspect. It should not be difficult to introduce a module into District Judge training. District Judge Mornington said that in cases where she had seen children she had found that cases settled more often, thereby saving court time. There were issues about lay magistrates but although it was agreed that this was more complex it was felt to be achievable. Mark Andrews suggested that the basic level guidance should be got out as soon as possible with a covering document setting out the provisos. Judith Masson suggested that it could be built into the electronic bench book produced by the JSB. Some amendments to the document were agreed and it will be further circulated.

Family and Friends Care: Good practice guide

Bridget Lindley explained that the Family Rights Group had, through a Freedom of Information request, surveyed the policies of Local Authorities on Family and Friends Care and had established that 69% of authorities did not have a policy at all. This summary guidance and a longer document were produced to encourage local authorities to adopt best practice. The FRG would envisage it being distributed as widely as possible. Teresa Hallett noted that some modification would be required to enable the guidance to apply in Wales. Deborah Ramsdale noted that resources were a problem for local authorities and may prevent them from doing as much as they would wish. It was agreed that after some slight amendments, the document should be recirculated to members for further comment.

Local Family Justice Councils

Paula reported that most of the local councils were active, and responses to questionnaires on their work in the last year show that the focus has been on implementing the President's interim guidance, improving delivery of services to victims of domestic violence, helping parents with learning difficulties, improving the delivery of mediation and organising mini pupillage schemes. The most recent conference for administrators had been held in Birmingham in October 2009. Only half the administrators had attended which was disappointing but despite this it had been a successful day. It was hoped that more administrators could be released to attend future events and it was suggested that pressure should be brought to bear on HMCS to allow this to happen. It was noted that some LFJCs were less effective in distributing information and it would be helpful to emphasise this area. The next LFJC conference will be in April.

Reports from Committees

Children in Families

Jane Craig said that the Committee was investigating a project on high conflict private law cases and hoped to commission a literature review and to talk to various groups within the FJS to establish whether there was a different way to deal with these cases.

Children in Safeguarding Proceedings

Lesley Newton reported that the Committee was finalising its paper on parents who lack capacity to represent themselves, it had discussed the paper on Family and Friends Care, and had made representations to the MoJ on the work on 'system wide targets.' It had also done a good deal of work on Independent Reviewing Officers and would be responding to the consultation issued by DCSF.

Experts

On behalf of Lord Justice Thorpe, Heather Payne reported that the Committee was receiving regular reports on the progress of the Bearing Good Witness pilot and expected an evaluation report in June 2011. It is considering a project on professional support and development for Expert witnesses. It was working with the LFJCs to extend the mini pupillage scheme and was in the process of drafting a protocol for GPs' surgeries to provide guidance about releasing medical records in family cases.

Domestic Violence

Alison Russell QC reported that the DV group continues to work to correct the confusion that still exists around the enforcement of non molestation orders and occupation orders. It has been active in clarifying the correct position about legal aid, correcting misapprehensions, and getting the information out to those who need it. A leaflet is in production to set out the correct position. The Group is also working on a protocol for process servers to ensure that courts will have all the information that they need to be satisfied about service of orders on perpetrators of domestic violence. This will help to avoid cases where courts have been unable to enforce orders that have been breached because they cannot be sure they have been properly served on the alleged perpetrator.

The group has also updated the text on the FJC website guide to the family justice system on domestic violence, and has contributed to MoJ consultations on new application forms.

Parents and Relatives

Bridget had covered some of the main topics of work in the earlier discussions. She referred also to the work on the Parent Information Pack in production by the MoJ on which the committee had provided considerable feedback.

Voice of the Child

In addition to the previously discussed work on children seeing judges, the group was occupied with work on children within the immigration and asylum system. With considerable assistance from Syd Bolton, it was progressing this and would be meeting shortly with officials from the Asylum and Immigration Tribunal. A further meeting with the young peoples' group based in Hull will take place in March.

ADR

The Committee is pressing for more detailed information about mediation to be on the interactive area of the Cafcass website. It is looking at in court conciliation scheme pilots; it contributed to the paper on judges seeing children and is currently working on its 'mission statement'.

Money and Property

The members of the Money and Property Committee include solicitors and barristers, academics and members of the judiciary. The Committee is concerned with the law and

procedures for the distribution of money and property on the breakdown of a relationship and it also provides advice on procedural matters in divorce and dissolution cases. It is currently considering the consultation issued recently by the Law Commission on the law relating to intestacy, in particular how that affects unmarried couples. It will provide a response to the consultation on behalf of the FJC. At its next meeting it will receive a presentation concerning a project to introduce binding arbitration as an alternative to court proceedings for deciding financial disputes between divorcing couples. It is also considering the production of a best practice guide for those involved in financial disputes, both lawyers and the judiciary, working in conjunction with the Judicial Studies Board. It has recently recruited a number of new members, with a view to extending its somewhat London centred membership.

Diversity

The committee is monitoring MoJ research on Sharia Councils, and working with Cafcass to evaluate and publicise the protocol with the UKBA. It was also working on a paper on interpreters which it hoped to bring to the FJC in April. It had responded to the MoJ's consultation on Relevant Third Party guidance to provide additional advice and support to frontline local authority employees when they are considering making an application as a relevant third party under the Forced Marriage (Civil Protection) Act 2007. It had also been looking at diversity issues in Serious Case Reviews and considering the impact of fixed fees on people with learning difficulties or mental health problems.

Education and Training

The Committee had overseen the updating of the guide to the family justice system on the FJC website and it was in discussion with SCIE on the development of training materials and an e-learning programme for social workers about pre proceedings.

Any Other Business

On behalf of the Council, Lesley Newton and Jane Craig paid tribute to the Chair, whose last meeting this was before his retirement. He had chaired the Council with good humour and charm and his hard work on behalf of children and families during his time in office was much appreciated by all. The members of the Council wished him a long and happy retirement.