



FAMILY JUSTICE COUNCIL
MINUTES OF THE MEETING HELD
MONDAY 20TH OCTOBER 2008

Present:

The Right Honourable Sir Mark Potter (Chair)

The Honourable Mr. Justice Bodey
Annabel Burns, DCSF
Paul Clark, Director of Children's Services, London Borough of Harrow
Stephen Cobb QC, Family Barrister
Martyn Cook, Family Magistrate
Jane Craig, Family Solicitor, Private Law
Nicholas Crichton, District Judge Magistrates' Court
Katherine Gieve, Family Solicitor, Public Law
Danya Glaser, Consultant Child Psychiatrist
Sheridan Greenland OBE, Head of Family Law, Ministry of Justice
Teresa Hallett, Cafcass Cymru
Sarah Kovach-Clark, Legal Services Commission
Elaine Laken OBE, Justices' Clerk
Professor Judith Masson, Bristol University
Marilyn Mornington, District Judge
Her Honour Judge Lesley Newton
Dr. Rosalyn Proops, Consultant Community Paediatrician
Khatun Sapnara, Family Barrister
Beverley Sayers, Family Mediator
Christine Smart, Cafcass
David Thomason, ACPO

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

Guests

Fiona Green, Cafcass
Yvonne Kee, NACCC
Debbie Singleton, NYAS

Apologies:

Professor Sir Al Aynsley-Green, Children's Commissioner for England
Keith Ingham, Welsh Assembly Government
Bridget Lindley, Consumer Focus Parent Interest
The Right Honourable Sir Mathew Thorpe, Deputy Chair

Announcements

The Chair informed the meeting that Sally Field has moved from her post as the Head of Family Justice at the Ministry of Justice and has been replaced by Sheridan Greenland OBE. The Council expressed its gratitude for all the work done by Sally and was glad to have the continued input from Sheridan.

This meeting was likely to be the last attended by Dr. Danya Glaser and Elaine Laken, as both had now retired. On behalf of the Council the Chair thanked both of them for their huge contributions to the work of the Council and was pleased to note that both would be continuing to assist the Council through their continued membership of the some of the Committees.

Mr. Justice Bodey would also be leaving the Council and the Chairmanship of the Money and Property Committee and the Council expressed its thanks to him for all his work.

Minutes of the last meeting

The minutes were approved.

Matters arising

Multi Agency Risk Assessment Conferences (MARACs)

Following the presentation to the last meeting by Diana Barran, the Domestic Violence Group had discussed how to raise awareness of MARACs in the Family Justice system. The Group had concluded that this was something that should properly be taken forward by the Family Criminal Interface Committee and had referred it to that Committee. Diana is also contributing to the local Family Justice Council newsletter, and writing an article for Family Law. She will also be speaking at the JSB.

The Family Criminal Interface Committee will meet on the 30th October and District Judge Barrie Cole, who sits on the FJC Domestic Violence Group, and the Assistant Secretary will attend on behalf of the FJC. The Chair noted that HHJ Newton and District Judge Mornington would be attending a meeting with Bridget Prentice following the Council meeting to raise issues around the Domestic Violence Crime and Victims Act 2004. The Council will consider inviting Mr. Justice Hedley, Chair of the FCIC to the next meeting of the Council in January.

Letter to the Local Family Justice Councils

Following discussion at the meeting in April, HHJ Newton had drafted a letter to local FJCs asking for information about the drop in numbers of public law applications being issued. A further draft of this letter had been circulated to members and was approved. (Update: this letter has now been sent out to the local FJCs.)

Family Group Conferences

Following discussion of the paper presented at the last FJC meeting, a redrafted version was approved for endorsement by the Council. The Chair commended it as a clear and informative document. The Council expressed its thanks to Bridget Lindley for all her work on this. The paper will now be put up on the FJC website and publicised widely.

Referrals from the Family Procedure Rule Committee

- i. Parents in care proceedings with learning difficulties or other disabilities – role of the Official Solicitor

Elaine Laken had circulated a document to the Council summarising the work she had done and a detailed letter from the Official Solicitor had now been received. It was agreed that comprehensive and helpful guidance in one document was required. It was noted that the Ministry of Justice through the Ministerial Steering group, was working on Best Practice, but this is not yet ready to be sent out, although it is nearing completion. It was agreed that this work should be further considered by the Children in Safeguarding Proceedings Committee at its meeting in December and a progress report will be given to the next Council meeting.

- ii. Sections 84-86 of the Adoption and Children Act 2002

The DCSF intend to consult on this, probably towards the end of the year, and the FJC will be asked to respond to that consultation.

UN Convention on the Rights of the Child

In the absence of Sir Al Aynsley-Green, this item was not discussed.

Contact Centres: Funding and Commissioning/LSC Consultation

Yvonne Kee of NACCC told the meeting that there were 300 child contact centres and over 60 of these offered supervised contact. These are not sufficient and some are under threat. The geographical spread is varied and the supported centres are seeing a number of inappropriate referrals to them which should properly go to supervised centres.

Some centres charge for their services. For some this is an initial referral fee which may be ongoing and will be paid either by the referrer or the family. Some supervised centres are run for profit and will charge. Part of the NACCC accreditation requires centres to say how much their charges are. Details about availability, opening times and charges should be made available before parties are referred. This does raise the issue of how parents can afford these charges.

Some centres receive trust and lottery funding. However, they are increasingly being told that as contact is a statutory provision they should receive statutory funding and this source of funding is being closed off.

Cafcass inherited money for 14 supervised centres but as it has commissioned services that money has become more thinly spread. Cafcass have said that those centres which receive their funding should be accredited.

Research carried out by NACCC has shown that the reliance on LSC funding by contact centres is geographically patchy. 15 centres have told them that this comprises between 5 -80% of their income. They recognised that this source of funding may need to be tightened up but they hope that there will not be a total ban.

There is little current funding from Local Authorities. They do not see this as part of their core work. A few social services departments do use contact centres for public law contact work.

NACCC can give some funds but it is not primarily a grant giving body. Legacy funding would only be used in emergencies (i.e. when threatened with closure) and voluntary funding is patchy.

The close link between statutory and legal functions creates problems and is leading to a reduction and closure of services at a time when supervised centres are more in demand.

Contact centres have a value in reducing court hearings and negative outcomes and allow difficult orders to be made. They can be key in solving complex cases.

The LSC maintain that funding of contact centres is not part of their legal aid function and the funding must come from elsewhere. This is a classic example of the need for joined up government thinking. There must be a consideration of how much is needed and where the funds are to come from.

Provision of reports is an integral part of assessment and therefore part of the court process. Could funding come from Children's Strategic Partnerships? Paul Clark said that this was not part of their role and any allocation of funds for this would result in less for other things. Wales has a devolved budget and Cafcass Cymru continues to fund existing contact centres but has no money to extend funding.

The main problems with the LSC consultation are that it covers the whole area of access to contact activities. There is limited money and if there has been no bidder for a particular area there will be no services in that area. There has been no scoping as to requirement.

Annabel Burns (DCSF), suggested that the nub of the issue is that contact centres are both part of the family justice system and also of Children's services and as such run the risk of falling between two stools. There is more funding than ever for contact services and activities. There is an important question as to the range of providers. There is no information yet on the rate of take up but it is likely to be high, as people will want to use services early in the process, which is clearly preferable. There will be careful monitoring and systems for data collection will be in place early. There is a risk that providers won't come forward and in those areas Cafcass will step forward and fill the gap. Perpetrator programmes are a specialist market and there may initially be gaps in this provision. There is work going on to provide these services and at the start in December there will be 6 providers, two in London, two in the north and two in the central area.

Fiona Green from Cafcass said that Cafcass has changed the way it deals with commissioning and, with NACCC, has looked at the whole sector and created a suite of services for children. Centres are more regulated now and required to provide monitoring. Cafcass services are voluntary and non charging. They include observed contact and indirect contact, preparation for mediation and supported parenting courses. Cafcass used to invest £1m and DCSF has increased funding up to £3million which will be ring fenced. Next year, funding is expected to be £4.5 million. The LSC and Cafcass have met and have agreed that it is Cafcass core business to carry out assessments. There has previously been duplication in cases where reports have been ordered under s7 of the Children Act 1989 as well as an assessment. In some cases both are necessary but this is not always the case. Cafcass is looking at gaps in provision and is developing a coalition to be able to deliver services. Cafcass cannot say that the LSC is wrong to stop funding these services. Cafcass will also be working with NACCC to develop enhanced standards for all contact centres which will be monitored by Cafcass. Co-parenting sessions are being developed by Relate and will be delivered to successful providers. Domestic Violence accreditation will come from Respect and there are currently six providers ready. DCSF and Cafcass will work together to provide access at any time dependant on what is best in a particular case. They are trying to ensure that a suite of services will be available for the judiciary to take advantage of. There is likely to be a massive demand for perpetrator programmes. It was clarified that the LSC will continue to fund risk assessments which are directed for example at the end of a finding of fact hearing where someone other than Cafcass will be directed to carry out the assessment.

Sarah Kovach-Clark emphasised that the LSC consultation was not a cost cutting exercise. It was intended to clarify the core business of Cafcass and the LSC. It is

hard to establish how much will be saved. The LSC was surprised to find that it was funding so much of this work and anticipates it amounts to around £1m. The issue for the LSC is that this should never have been funded in this way. Concern was expressed about the situation that would arise if the LSC withdrew funding before Cafcass funding was in place next April. The LSC recognises that the guidance was too widely drafted and confirmed that there are areas of specialist work that they will continue to fund. The Guidance will be redrafted for clarity. The meeting expressed concern that Cafcass was being asked to take on extra work when there are already backlogs. Fiona Green said that there would not be a large amount of additional work, as many cases already have s7 reports. The Members did not agree, suggesting that organisations such as Pro Contact in Manchester do much more intensive reports. Fiona Green said that Cafcass can refer out to 60 professional organisations (providers) although it will maintain case management.

Cafcass is looking at ways in which it can work with local authorities. Families are now often seeking private law orders because local authorities are unwilling to take proceedings. There is a role for Cafcass in supporting children resulting from family breakdown and work is going on in DCSF to look to taking forward a programme. There needs to be a wider debate on the state's role in private law. There has been a sea change in what is provided especially for pre school children and Every Child Matters has made a difference. A wider debate is needed on the state's role in private law. There is a question as to whether children caught in the middle of parents' disputes are "children in need". It is noted that means testing is required for services under s17 of the Children Act 1989.

NYAS concerns centre on an interpretation of the guidance which suggests that provision of r9.5 representation is outside the scope of public funding. Sarah Kovach Clarke said that there is nothing in the consultation to take r 9.5 out of scope and that the LSC remains committed to representation and has no intention of removing this. The LSC manual sees Cafcass as the first referral stage but there is a protocol between Cafcass and NYAS concerning referrals. Sir Mark Potter expressed concern that the proposed LSC changes will cut across the Private Law Pathway work.

Although reassured by the statement about r9.5 representation, NYAS remain concerned about new matter starts and it was agreed that they would meet with the LSC. NYAS also remains concerned about the future of NYAS House in Birkenhead which they fear will be unable to continue if there is a gap in funding.

It was agreed that Beverley Sayers would meet with Sarah Kovach Clark to discuss the role of mediation.

The meeting considered that there was a need to publicise some of the points raised to correct misconceptions that had arisen from the wide drafting of the consultation.

Prosecuting Domestic Violence (CPS consultation)

Unfortunately, Karen Morgan-Read from the CPS was unable to attend. A draft response to the consultation has been provided by District Judge Cole on behalf of

the Domestic Violence working group and it was agreed that HHJ Newton would provide some additional material. The Council expressed some concern that there should be some references to the civil route and that there was still a “silo” issue, where different areas of the justice system were failing to connect. Criminal lawyers were not familiar with family procedures and vice versa. District Judge Crichton noted that in criminal proceedings, a defendant charged with violence has to have a lawyer to cross examine the alleged victim. This is an item that the FCIC should consider as there should be the same provision in family courts. It was noted that HHJ Jenkins had done some work on cross examination of children in family cases and that in some family cases members of the bar were undertaking this work on a pro bono basis to avoid victims of abuse from being cross examined by their alleged attackers. This can only be dealt with by a change in the law.

Local Family Justice Councils

Following the work done over the summer by Elaine Laken, which was summarised in the paper before the Council, work was now underway to improve communications. A newsletter will go out shortly which will be sent to all local FJCs and to members of the national Council. There needs to be a further consideration of the role of sponsors, who should be asked to report more regularly. There has been an excellent response from local FJCs to recent requests for information and assistance. There is still an issue about finance and how budgets are allocated and it was recognised that better links ought to be established with HMCS regional directors. It was noted that in Wiltshire there is currently no administrator, as there is apparently no funding. Sheridan will take this up with the Area Director. Judith Masson asked whether the national Council should have another representative from HMCS to provide an operational perspective. Sheridan agreed to take this back and report back to the next meeting. Appointment of an HMCS representative would reflect the status quo ante, now that Sheridan had taken over from Sally Field.

Research Bid

The Council agreed to fund a piece of work to be undertaken by the Family Rights Group on the impact of the Public Law Outline on Family Group Conference services in England and Wales and make recommendations for practice developments.

Private Law Working Party

The Council had been supplied with an update on the work of the committee. A new model is hoped to begin in April and the Working Party is near to completion of a final draft of Programme and Schedules. This will be sent out for comment to a number of key users including the Family Justice Council for a limited three week period of consultation.

Professor Masson expressed concern at the variety of implementation dates for various new pieces of legislation and the confusion that this engendered. Members enquired about the position of the draft allocation order, which it is understood, will come into force in late November. Sheridan undertook to establish the position.

Parents and Relatives Group

The Council agreed the structure for this group and noted the questions raised by Bridget Lindley. Individual committees will consider how the new group can assist in their work.

Reports from the Committees

Executive

The Executive Committee has continued to undertake its management role. It approved the arrangements made for the new Parents and Relatives Committee and has begun preliminary discussion on the topics for the local Family Justice Council conference in 2009.

Alternative Dispute Resolution

The first formal meeting of this Committee will take place in November. It will be looking at a number of projects including reviewing previous research into ADR and looking into the possibilities for the future.

Children in Families

The Committee has made further representations to the Ministry of Justice on the content of the C100 (the new Children Act application form). Its suggestions have largely been accepted by the MoJ and have been put to the Rule Committee. It is receiving reports on the work towards implementation of the Contact Activities provisions of the Children and Adoption Act 2006 and will continue to monitor the progress. Following the issue of the consultation by the Legal Services Commission on proposed changes to family guidance, it is taking the lead on that response. It will be considering the recently published report on contact from Joan Hunt at its next meeting.

Children in Safeguarding Proceedings

The Committee has had a meeting with officials from the DCSF to discuss the current review being undertaken by DCSF and DH on social work training and provided feedback for that review. It has completed and circulated the revised guidance on linked care and placement proceedings, in the light of the introduction of the PLO and developments since it was issued. A response to the consultation on Family Barristers Fees was submitted to the Legal Services Commission and the Committee will be taking forward work on representation of parents with learning difficulties or other disabilities in care proceedings.

Diversity

Members of the Committee attended training on Diversity Impact Assessments which proved interesting and informative. The out of London meeting will take place in Manchester on the 23rd October and will be attended by members of the Committee and the Secretariat. Representatives from 10 local FJCs have been invited and most have confirmed attendance. The Committee is continuing with planning for the Forum for Community Groups which is likely to be held in the early part of 2009.

Domestic Violence

The Domestic Violence working group continues to be the only Committee which regularly meets outside London, holding its most recent meetings in Manchester. It continues to monitor the reports concerning the enforcement of Domestic Violence injunctions and members will be meeting the Minister Bridget Prentice to discuss this and other matters after the Family Justice Council meeting on the 20th October. It is taking forward the work on MARACs following Diana Barran's presentation to the July meeting of the FJC and will be leading the FJC's response to the consultation issued by the CPS on the prosecution of Domestic Violence. The group has also requested that the FCIC should consider the information sharing protocol between the Courts and ACPO.

Education and Training

The Committee has had discussions with the Children's Champion at the UK Borders Agency about identifying training materials which could be of use to legal and social care professionals and to local Family Justice Councils. The Mapping Exercise on training for the various disciplines involved in the Family Justice System is being finalised and will be placed on the FJC website. The Chair of the Committee and the Secretary have had a meeting with the Social Care Institute for Excellence (SCIE), to explore the scope for joint working in the dissemination of relevant training materials produced by SCIE to family lawyers and improving the quality of materials supplied to social workers regarding the family justice system.

Experts

The Committee is currently considering how best to evaluate the contribution of experts to family proceedings. It is also looking at the use of experts from overseas in family cases and early drafts of papers on both topics are currently being considered and revised by the Committee. It continues to be active in promoting the scheme of mini pupillage for expert witnesses and looks forward to providing input into the programme for the 2009 Dartington conference. The LSC pilots for the implementation of "Bearing Good Witness", the Chief Medical Officer's report into provision of expert witnesses are starting and it was agreed that the Secretariat would obtain details of these for circulation to the Council.

Money and Property

The Committee will meet next on the 11th November, when it will be considering best practice guidance for a number of issues in financial proceedings that will be of use

for lawyers, judiciary and experts. It will also receive an update on the Child Maintenance Enforcement Commission and the upcoming changes to child maintenance.

Voice of the Child

The debate on enhancing the participation of Children and Young People in family proceedings will take place tonight. It will be chaired by the President and there is an excellent line-up of speakers and panel members. Interest in the event has been very great and it is oversubscribed. The group has been disappointed by the lack of response to the tendering exercise the selection of a new representative group of young people to assist the Family Justice Council. It is considering how to take this forward.

Annual Report

Members were asked to send any comments on the chapters to the Secretariat