



FAMILY JUSTICE COUNCIL
MINUTES OF THE MEETING HELD
7TH JULY 2008

Present:

The Right Honourable Sir Mark Potter (Chair)
The Right Honourable Sir Mathew Thorpe (Deputy Chair)

Professor Sir Al Aynsley Green, Children's Commissioner for England
The Honourable Mr. Justice Bodey
Paul Clark, Director of Children's Services, London Borough of Harrow
Martyn Cook, Family Magistrate
Jane Craig, Family Solicitor, Private Law
Nicholas Crichton, District Judge Magistrates' Court
Sally Field, Head of Family Law, Ministry of Justice
Katherine Gieve, Family Solicitor, Public Law
Teresa Hallett, CAFCASS CYMRU
Sara Kovach Clark, Legal Services Commission
Elaine Laken OBE, Clerk to the Justices Bath and Wansdyke and North Avon
Bridget Lindley, Consumer Focus Parent Interest
Amber Longstaff, DCSF
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

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

Guest: Diana Barran, Co-ordinated Action against Domestic Abuse (CAADA)

Announcements:

On behalf of the Council, the Chair congratulated Elaine Laken on her recent OBE and welcomed Professor Sir Al Aynsley Green, Children's Commissioner for England who attended for the first time. The Council is pleased to note the appointment of ACC Garry Shewan as the new ACPO representative on the Council.

Apologies:

Stephen Cobb QC, Family Bar
Dr. Danya Glaser, Child Mental Health Specialist
Sheridan Greenland OBE, HMCS
Keith Ingham, Welsh Assembly Government
Assistant Chief Constable Garry Shewan, ACPO

Presentation from Diana Barran, Chief Executive Co-ordinate Action Against Domestic Abuse (CAADA)

Diana gave a presentation to the Council on the work of CAADA which is a registered charity established 3.5 years ago. CAADA has two main functions: it trains Independent Domestic Violence Advisors (IDVAs) who are specialist case workers in domestic violence. CAADA runs a 15 day training course and has so far trained 450 workers who come from varying backgrounds, including local authorities and charities, the police and social work. It is funded jointly by the Home Office and the Ministry of Justice and through trusts and donations. The training has brought precision and definition to the role. IDVAs work with predominantly high risk victims of domestic abuse, focusing on their safety.

The second element of CAADA's work relates to Multi Agency Risk Assessment Conferences (MARACs). These were set up in Cardiff in 2002 as a means of offering additional protection to high risk adult victims of domestic abuse. Referral into the MARAC system is via a simple checklist of risk factors. They are based on information sharing between a wide range of agencies including those in both the statutory and voluntary sectors. Their work has been evaluated by the University of Cardiff and showed a reduction in repeat offences. MARACs have now been rolled out nationally to 107 areas. Statistics indicate that of cases referred to MARACs in the 12 months to March 2008, only 20% came back for review, indicating a very positive result. MARACs are usually convened by the police. They are currently voluntary but discussions are underway to make them more formal in nature. A MARAC will consider approximately 15 cases in a single meeting, offering each agency represented the opportunity to contribute the information it has on a particular case. Any agency can refer a case into the MARAC system. Although the majority of referrals have the victim's consent, they can be made without. The victim does not attend but their view can be fed in. The police will notify victims of the referral and put them in touch with an IDVA before the meeting. The IDVA can then keep the victim informed. Some victims do not wish to engage with the process. MARACs are currently used within the criminal justice system and the extension of their use in the family justice system could be valuable.

There are practicalities that would need to be considered, particularly around the time and method of referral, and whether it should be done by judges, solicitors or Cafcass. There are some similarities to the procedures when a court makes a direction under s37 of the Children Act 1989. Individual referral at the present time by judges was probably not practical and there would need to be co-ordinated guidance.

The Council was very supportive of the MARACs approach and of its extension to the family justice system. However, it considered that whilst it could offer support this it was not in a position to drive this project forward. It was noted that in some areas where there are MARACs there is no funding and that there has been a huge increase in referrals. It was agreed that the Domestic Violence group should look at this and consider the way forward. It would be helpful in the meantime if a letter could be written to the relevant government departments to urge them to take this forward. It was noted that following the report of the Home Affairs Select Committee on Domestic Violence, the first meeting of the newly established Domestic Violence stakeholder group will be taking place this week and District Judge Mornington asked for any points they to be raised.

It was also suggested that an article in Family Law would be a good way to publicise MARACs to the family justice system.

Minutes of the last meeting and matters arising

The minutes were approved.

Matters arising:

- **Domestic Violence and Victims of Crime Act 2004**

The research commissioned by the MOJ should be available shortly. It will compare the position before and since the implementation of the Act.

- **Public Law Fees**

The Government response to the consultation was published in May. Guidance on waiving fees had been circulated to members. It was noted that there is a suggestion of a dramatic drop in cases being issued since the introduction of the Public Law Outline, probably caused by the emphasis on pre proceedings work. There is some conjecture that this has been affected by the rise in the fees. At this stage it may be too early to tell. The Ministry of Justice collects data on cases on a monthly basis and these figures can be made available to the Family Justice Council. Concern was expressed about the perceived drop in cases, when recent research conducted for the MoJ had indicated clearly that cases were not being brought unnecessarily. It was noted on behalf of the DCSF that data is collected from local authorities on an annual basis and that the LSC has data on cases which it will be able to share with the Council. The Welsh Assembly Government is also collecting data and an increase in applications under section 8 of the Children Act 1989 has been noted in Wales. It was agreed that local Family Justice Councils could be asked to provide information about the position in their areas. There is evidence that there has been an increase in the use of Family Group Conferences (see below). The Family Rights

Group will be asking the FJC to assist it with funds to carry out a survey on the use of Family Group Conferences.

- **Dartington conference 2009.**

The first planning meeting for this event will take place later in July and further suggestions for topics should be sent to the Assistant Secretary. Strong support for a mental health theme emerged during discussion at the meeting.

- **Data Handling**

Following the last meeting, updated guidance had been issued by HMCS and most areas seem to be managing to arrange to get papers to magistrates; although there are problems about funding courier services.

- **Business Plan** - the draft plan is currently with Ministers
- **Enhancing Participation of Children and Young People:** an update on plans for the event on the 20th October was given to members.
- **Experts from abroad** The Experts Committee has begun to consider this important question and will be producing a paper for the Council.

Local Family Justice Councils

The Council discussed providing a steer for training events for the local councils. In the past, the Council has been prescriptive on what topics local councils should adopt for their events. Recently it has been content to leave the decision to the local councils. Some of the local councils have indicated that they would welcome a steer on possible topics. It was agreed that it would be appropriate for the Council to provide a short list of topics. For the current year, the topics of the PLO, Diversity and Kinship Care are suggested. All local councils have been provided with the papers from the 2007 Dartington conference which will assist with any event on Diversity. For the following year, the Council would consider suggesting topics on Money and Mental Health.

Bearing Good Witness

The LSC had sought assistance from the Council in getting some snapshot information about availability of experts. The Local Family Justice Councils had been asked for their assistance and just over half had responded. This had provided a useful picture for the LSC (which will produce a map of responses) but it would be helpful to ask again for those who had not yet responded to provide the information.

The closing date for those service providers who wish to apply to be part of the pilot scheme is the 23rd July 2008. Any multi disciplinary team may apply. The Project Board will meet again in early October 2008. It was agreed that when LFJCs are requested to provide information it would be helpful to copy sponsors into the requests, to keep them informed of developments.

Linked Care and Placement Order Applications (update of guidance)

The Children in Safeguarding Proceedings Committee issued guidance on this topic in January 2007 and agreed that it would be appropriate to update this. It is understood that a practice direction on this issue is now unlikely. DCSF were intending to send a letter to Directors of Children's Services to remind them of the courts' expectations when an application for a placement order is to be made. It is thought that this letter has gone out but Amber Longstaff agreed to check the position. The draft from the Committee had been circulated to members and the draft, with some small suggested amendments, was approved and will be circulated widely.

Family Group Conferences

Bridget Lindley spoke to a draft paper on organising Family Group Conferences which had been circulated to members. This document, a 'Guide for Courts, Lawyers, Cafcass officers and Child Care Practitioners' had been developed by the Family Rights Group in consultation with the Family Group Conference Network. There has been an increase in use of FGCs and it would be helpful to receive endorsement from the Family Justice Council for this guide and to see it widely circulated. It is noted that the guide would be useful if any local councils wished to adopt kinship care as their training event this year. Bridget said that local services would be able to assist with such events. There is not yet complete coverage through England and Wales for FGCs and a system of accreditation is currently being developed.

Mr Justice Bodey asked how FGCs correlated with fact finding in public law matters. Bridget explained that any agency referring to an FGC (which is normally the local authority) will need to be clear on the issues but in cases where findings of fact remain to be made, there may still be scope for contingency planning. She said that the Family Rights Group was keen to find out what was happening with the use of FGCs and would be approaching the FJC with a suggestion for research into this area. It is noted that Cafcass are also using FGCs, based on their model, and clarity of definition is important. It was agreed that Bridget Lindley and Christine Smart would liaise on ensuring the definitions were clear and to agree a form of wording, whilst Beverley Sayers would look at the paragraph on mediation. The revised document will then be submitted to the next meeting of the Children in Safeguarding Proceedings Committee in September for further discussion.

District Judge Crichton noted that it was important that Family Group Conferences were held early on, if possible, before a child has been placed in foster care, to avoid delay.

In principle, the FJC will be happy to endorse the document, subject to work on the details.

Reports from Committees

Executive

The Executive Committee has continued to undertake its management role, drafting agendas and approving consultation documents. It has approved projects for the Diversity Committee (see report below) and continues to act as the steering group for the main Council.

Children in Families

The Committee has been working closely with the Ministry of Justice on proposed new forms for Children Act work, pending the implementation of the Children and Adoption Act 2006. It will be continuing this work with particular reference to the redrafting of the C1A. It has been pleased to see the publication of the Practice Direction on domestic violence. It will be considering the report by Liz Trinder on the longer-term outcomes of in court conciliation at a forthcoming meeting. With the Children in Safeguarding Proceedings Committee it has agreed that a formal response to the LSC paper will not now be submitted, and that the LSC should be asked for a further report in the autumn.

Children in Safeguarding Proceedings

The Committee is revisiting the guidance on linked care and placement proceedings, in the light of the introduction of the PLO and developments since it was issued. It will also be looking to identify any improvements in data collection which may be possible with the current MoJ computer systems. It will also be examining the use of accommodation under s20 of the Children Act 1989. In accordance with its business plan it will be taking forward work on residential assessments and promoting recruitment and retention of high quality of social workers. It will respond on behalf of the FJC to the consultation on Family Barristers Fees recently issued by the Legal Services Commission. A sub group has worked with the DCSF and IT contractors in devising formats for core documentation which can be created and stored on the Integrated Children's System and also used for the purpose of court proceedings.

Diversity

The Committee will be undertaking training on Diversity Impact Assessments which will enable the members better to understand these issues, particularly in responding to consultations, and providing advice to government departments. The Committee will also be organising an out of London meeting to which representatives of local family justice councils will be invited. The venue is likely to be Manchester and invitations will go to representatives from the north/north east and north Wales areas. If the event is successful it will be repeated in other areas. The Committee is also planning to hold a Forum for Community Groups which is intended to follow the precedent of the Parents Event held in 2007.

Domestic Violence

The Committee is continuing with its work to collect data on the rate at which lawyers are ceasing to do publicly funded work and availability of legal aid for clients seeking/opposing injunctions and a questionnaire has been sent to the local Family

Justice Councils to gather information. It will also be looking to collect information on the availability of perpetrator programmes. It hopes to arrange meetings with the MoJ to discuss the impact of the Domestic Violence Crime and Victims Act 2004 and, with the JSB, to discuss training for all judges magistrates in Domestic Violence "Honour" Crime and Forced Marriage pursuant to the recommendations of the HASC. The JSB will be including training on Forced Marriage from November. The HASC report adopted all recommendations made to it by the FJC. The Committee is working with Manchester and Stoke LFJCs to produce a guide for LFJCs to improve the response of the police, cps and magistrates courts to breaches of non molestation orders post July 2007.

Education and Training

The Committee has virtually completed the Mapping Exercise on interdisciplinary training. It will be liaising with SCIE (Social Care Institute for Excellence) on dissemination of training materials and best practice for social workers and will be talking to the UK Borders Agency to identify what it is doing to educate professionals and other agencies in the family justice system on how immigration issues impact on their work. It has made suggestions for topics for training events for the local Family Justice Councils.

Experts

The Committee is considering options for a project to provide feedback on the standard and quality of expert evidence. It continues to work with the GMC to find a solution to the delays in obtaining transcripts in cases where complaints have been made about experts, and, following a referral from the FJC meeting in April is considering the question of overseas experts brought in to cases in England and Wales.

Money and Property

While disappointed that the Government has indicated it does not intend to proceed on the Law Commission's recommendations on new remedies for cohabitants, the Committee will be offering to assist on researching the operation of the Scottish legislation. It will continue to press for a change in legislation to provide for interim lump sums. It welcomes the indication that the Law Commission will be considering pre nuptial agreements as part of its forthcoming programme and will seek to feed into that work. It is also looking at producing a package of best practice guidance for a number of issues in financial proceedings for use by local Family Justice Councils.

Voice of the Child

Following the publication of the paper on Enhancing the participation of Children and Young People in family proceedings in the May issue of Family Law and on the FJC website, the Group is looking at the feedback received and is planning a debate on the topic. This will be held on the 20th October 2008 at the Inner Temple. The Group has also finalised the criteria for the selection of a new representative group of young people to assist the Family Justice Council. A tendering exercise will be launched

imminently to identify and select the group, with a view to having them in place by October.

Parents and Relatives Group

The first meeting of the Group will take place after the main FJC meeting to be attended by representatives from the main FJC and from Family Welfare Group and Parentlineplus. This will consider the way forward.

ADR Group

The Group is now underway and among other projects is in discussion with the University of Exeter about research. It is working with the JSB and HMCS to look at provision of training. It will be encouraging local Family Justice Councils to set up their own committees and hopes to develop a paper to support them in doing this. A paper is being produced in partnership with Cafcass.

Cafcass update

A paper was circulated by Christine Smart. The Council was pleased to note that following concerns expressed about the difference in practice between Cafcass and CAF/CASS Cymru on carrying out police checks in private law proceedings, Cafcass has endorsed the recommendations made by the Council, that full background checks should be made. The possible impact of the implementation of the Children and Adoption Act 2006 on Cafcass and CAF/CASS Cymru was discussed. It is generally thought that the impact will be low in the first year. The Cafcass private law pathway and agreements locally are allowing an early intervention model to bed in. It is likely that more resources will be committed to the “front end” of private law cases, such as perpetrator programmes, parenting programmes, and family group conferences. There is currently no statistical data available on the number of committal applications for breaches of contact orders available but there has been research done into the outcome of 300 contact cases for the Ministry of Justice which will be published. The DCSF is looking at relatively low enforcement figures and is in discussion with National Offender Management Services about specific data collection. There will be manual data collection in courts. There are concerns about Cafcass taking on this extra work when there are currently considerable delays in some areas in completion of reports. Martyn Cook expressed his disappointment that, in the recent consultation on the Allocation of Proceedings Order, so much of the response was dependant on the adequate provision of Cafcass resources and raised the concern that fewer cases would be transferred to the FPCs in the way that the proposed Order intended if insufficient Cafcass resources were available in those courts. Christine Smart said that Cafcass was aware of the problems and was actively considering its strategy to address there. She encouraged Council members to contact her if they had specific issues they wished to raise.

Family Criminal Interface

Following discussion at the last meeting of the Executive Committee, Lord Justice Thorpe confirmed that the Family Criminal Interface Committee, chaired by Mr.

Justice Hedley, was active. It does not hold regular meetings but meets as and when it needs to do so. The Secretariat is copied in to its minutes.

Referrals from the Family Procedure Rule Committee

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

The FPRC had referred this question to the Council for consideration, as it considered it more appropriate for the Council. If the question of whether a party requires assistance is not raised until after the commencement of proceedings unnecessary delay can be caused. Her Honour Judge Newton said that in some cases where there is concern about capacity to give instructions, the parent may not meet the criteria set down by the learning disabilities teams of local authorities. If this is then raised at a first appointment it would be useful if a local authority could obtain a cognitive function report to assist the court. There are additional problems when, if there are mental health issues and capacity to give instructions fluctuates, the Official Solicitor may not act consistently throughout the case. This can cause further delay when cases are referred back to him to consider acting. In many cases, the Official Solicitor has little direct involvement in a case, instructing a local solicitor to act. There are independent specialist advocacy services that could help but there needs to be accurate information of where these are available. It would be valuable if the FJC could identify good practice. It was agreed that this should be referred to the Children in Safeguarding Proceedings Committee, who would set up a small working group to look at the provision of guidance to local authorities on best practice. The Committee would invite the Official Solicitor to attend a meeting to discuss this. Elaine Laken agreed to look at this question prior to the next meeting. The Council considered that if the issue of mental health was considered as a topic of the Dartington conference in 2009, this would be a valuable session.

Sections 84-86 of the Adoption and Children Act 2002

The Council agreed to support the recommendations of the paper presented to the FPRC, urging that regulations be made to ease some of the problems currently experienced by the requirements that prospective adopters from abroad must obtain parental responsibility for a child before the child can be removed from the jurisdiction for the purposes of adoption. This requires both prospective adopters to fulfil the residential qualification that the child must have had his home with them for 10 weeks prior to the application for Parental Responsibility. This is seen as a significant disincentive to prospective adopters from abroad who find it difficult to satisfy this requirement. The Council supports flexibility and the making of regulations. It notes that there is a potential problem with the definition of relative in the Act, but in the meantime will support the recommendations of the paper, noting that the present inflexibility is not to the advantage of children. Letters will be drafted to the DCSF and to the Welsh Assembly Government.

Sustainable Development

It was agreed that it would be a useful exercise to look at the working methods of the Council and its committees and reflect on whether there were areas where the

Council could improve its practices. The Secretariat would investigate the MoJ's sustainability policies and what assistance these could offer the Council.

Any Other Business

Sir Al Aynsley Green spoke to the Council about the recent report issued by the four Children's Commissioners on the UN Convention on the Rights of the Child. He urged the Council to consider its position on the Convention and what it should be doing to promote children's rights. It was agreed that he would provide further briefing for a discussion at the October meeting of the Council. He also encouraged the Council to consider its stance on asylum and immigration issues.

Secretariat
22nd July 2008