

MINUTES OF THE MEETING OF THE FAMILY JUSTICE COUNCIL
SUNDAY 27TH APRIL 2008

Present:

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

The Honourable Mr. Justice Bodey
Martyn Cook, Family Magistrate
Stephen Cobb QC, Family Bar
Jane Craig Family Solicitor, Private Law
Nicholas Crichton, District Judge Magistrates' Court
Sally Field, Head of Family Justice Ministry of Justice
Katherine Gieve, Family Solicitor Public Law
Dr. Danya Glaser, Consultant Child Psychiatrist
Sheridan Greenland OBE, HMCS
Teresa Hallett, CAFCASS Cymru
Keith Ingham, Welsh Assembly Government
Elaine Laken, Clerk to the Justices Bath and Wansdyke and North Avon
Bridget Lindley, Consumer Focus Parent Interest
Professor Judith Masson, Bristol University
Marilyn Mornington, District Judge
Her Honour Judge Lesley Newton
Dr. Rosalyn Proops, Consultant Community Paediatrician
Beverley Sayers, Family Mediator
Christine Smart, Cafcass

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

Apologies

Simon Bennett, Department of Health
Paul Clark, Director of Children's Services LB Harrow
Carolyn Hamilton, Office of the Children's Commissioner for England
Sarah Kovach, Clark Legal Services Commission
Jeremy Oppenheim, Home Office

Minutes of the last meeting and matters arising

The Chair noted an amendment to the minutes of the meeting held on the 28th January. On page 10 it should be additionally noted that Mr. McGladdery suggested that contact arrangements should be renamed "relationship agreements" which could include a wider and richer range of agreements for the parents as well as the child, which he suggested would ensure a better long term outcome of the child's development.

The minutes were otherwise approved.

There were a number of matters arising:

Domestic Violence Crime and Victims Act 2004

There continues to be concern about how the enforcement provisions of this Act are working. This has been fuelled by recent media stories. District Judge Mornington said that unsolicited reports continued to be received from judiciary expressing concern at a reduction in numbers of applications and failure to arrest and prosecute for breaches. The Domestic Violence Working Group of the Council has been pressing for agreed statistics from the Ministry and would seek a meeting with the Minister to discuss the matter. She informed the meeting that ACPO were collecting their own statistics. The report of the Home Affairs Select Committee which had taken evidence on this topic is awaited. For the Ministry of Justice, Sally Field informed the meeting that some interim statistics on applications had been circulated. These had yet to be fully validated but they do not show a significant dip in applications or orders. However, they do show a large increase in the making of Occupation orders under Part IV of the Family Law Act despite there being no comparable increases in applications. Enforcement of occupation orders remains in the County Court, and the growth in orders may be related to this. Officials have had meetings with the Association of District Judges and the Council of Circuit Judges to discuss with judiciary why the anecdotal information appears to differ from the statistical material. A meeting with the FJC has been planned for July. It is intended to publish the statistics in May and it may, therefore, be possible to bring the meeting forward once these are available. The current absence of an ex officio member of the FJC from ACPO prevents direct police input. It is hoped that an appointment will be confirmed shortly.

Public Law Fees

The new fees order has now been published and comes into force on the 1st May 2008. It provides for an issuing fee of £2,225 for an application under s31 of the Children Act 1989, with additional fees payable at varying stages depending on whether the case reaches a final hearing. There is provision for partial refunds if cases settle at an early stage. Bridget Prentice gave a written ministerial statement on the outcome of the consultation on the 21st April in which she said that she was satisfied that the Government had responded in full to those who objected to the proposal on the basis that it was not clear that authorities had been funded. She also said that she was satisfied that the proposals do not create a risk of harm to children through local authorities neglecting their statutory duty to protect children. The response to the consultation paper is to be published in full within the next two months. District Judge Crichton expressed concern that the success of the recently established Family Drug and Alcohol Court depends on cases being brought early to Court and that the higher fee might act as a disincentive to local authorities to do this. He hoped that the Government would recognise this

potential conflict and might consider exempting cases brought to the Drug and Alcohol Court from the increased fees.

Members of the Council continue to express concern about the impact of the fee rises, particularly on the perceived rise in the use of accommodation under s20 of the Children Act 1989, on which there is insufficient statistical information. The Safeguarding Committee is actively seeking to encourage collection of statistics relating to this. Keith Ingham noted that in Wales, local authorities are being asked to collect this information. Qualitative research is required. Concern was also expressed about the perception of a financial incentive to settle cases and a consequent increase in applications for residence by grandparents, and other kinship carers, who had to pay large fees to make such applications. Sheridan Greenland stated that active work to keep children with their families and extended families formed a major part of the Public Law Outline and of the DCSF Children Act Guidance. There was no increase in the existing fees payable for residence or similar applications and the procedure on fee exemptions remained unchanged. Fee exemption is an administrative function and Sally Field undertook to pass on the Council's concern that further guidance should be issued to those exercising this function on exceptional circumstances.

Bearing Good Witness

Lord Justice Thorpe reported that the LSC is about to launch a major pilot to extend the use of multi disciplinary teams. This will begin in summer 2008 and will run for approximately one year. There are expected to be five to ten pilot areas; locations have not yet been decided. It has been agreed that they should, if possible, be attached to care centres. They will focus on existing teams who have already expressed interest. The majority will be NHS teams but there will be at least one private service provider, which should be a team focussed on family justice, and not the criminal field. The Project Board will be meeting at least twice a year. Its members are currently drawn from the LSC, the DoH and the MoJ but it has been accepted that it should also have local authority and legal practitioner representatives and medical representatives who will be appointed following approaches to the Royal Colleges. Ros Proops observed that clinicians had been generally keen on the recommendations of the report but interest was waning. Lord Justice Thorpe reported on a meeting that had taken place concerning a proposed practice direction to enable the GMC to obtain court documents following complaints about practitioners. Doubts had been expressed at that meeting about the need for such a practice direction and this would be further discussed with the GMC. Keith Ingham noted that the recommendations in Bearing Good Witness will not apply in Wales.

Reports from Committees

Executive

The Executive Committee has continued to undertake its management role, drafting agendas and approving consultation documents (so far this year, the Marriage to Partners from Overseas, Public Law Fees and the Forced Marriage (Civil Protection) Act Relevant Third Party). It has approved expenditure for translations of the booklets originally designed for parents with learning difficulties into a number of languages and has agreed on the formation of a small group to look at future projects for the FJC.

Children in Families

The Committee continues with work around the report on contact, and is eagerly awaiting the publication of the Practice Direction to take this work forward. It was noted that the Practice Direction is currently with the Secretary of State for approval and it is hoped that it will be issued in May. (The Practice Direction has now been published). At the next meeting it will be considering the recently published report by Liz Trinder on the longer-term outcomes of in court conciliation. It has considered the question of applications by grandparents and the leave requirement and, having noted the outcome of a review by DCSF and divided opinions on the Council, has concluded that this could not be taken further forward by the Council.

Children in Safeguarding Proceedings

The Committee remains very concerned about delays in care planning and the impact of placement orders and a paper is being drafted for submission to the DCSF inviting them to look at this issue and particularly at the role of local authority panels. The Committee is alive to the introduction of the PLO and the impact on care proceedings and will formulate questions for the PLO programme board on matters which are causing concern to practitioners. In this context, the Committee is particularly concerned with the question of assessments in public law cases. The Committee will also keep a watching brief on the effect of public funding fixed fees on representation in care proceedings. The Council expressed its thanks to Katherine Gieve, who has stepped down from the Chairmanship of the Committee, for all her hard work. HHJ Newton will now take over as Chair.

Diversity

The Committee has now provided assistance to Sue McGaw on the diversity aspects of Parenting Assessments. The booklets for parents with learning disabilities involved in public and private law proceedings have now been translated into a number of languages. The Committee is continuing to investigate the best way to engage with community groups to discuss their needs and identify their priorities. The Committee contributed to the consultations on Forced Marriage (Relevant Third Party) and Marriage to Partners from overseas and continues to provide advice to HMCS on items such as forms of orders in preparation for the implementation of the Forced

Marriage Act. It also provided input into work being done on the Unified Court Service which has been well received by HMCS.

Domestic Violence

The group continues to be concerned about the impact of the amendments to Part IV of the Family Law Act 1996 contained in the Domestic Violence Crime and Victims Act 2004. It is considering how best to take forward its objectives and is drafting a questionnaire to local Family Justice Councils on the availability of perpetrator programmes in their areas and what they would like to be available in the way of treatment programmes. The Group is also seeking information on the rate at which lawyers are ceasing to do publicly funded work and the availability of legal aid for clients seeking/opposing injunctions.

Education and Training

The Mapping Exercise is now in draft form and should be completed shortly. The Committee is considering the formulation of a policy for the role of the FJC and the local FJCs in interdisciplinary training and among other possible projects, the production of a DVD offering assistance in court skills for social workers.

Experts

The Committee will be monitoring the impact of the PLO on expert witnesses. It is also considering methods by which feedback can be provided to experts on their reports and evidence. The implementation of the CMO's recommendations will continue to be a priority.

Money and Property

The Committee continues to lobby the Law Commission to consider reform of s25 of the MCA 1973, and to review best practice on FDR hearings. It has been disappointed by the Government's decision not to proceed with Cohabitation reform, in respect of which it had prepared and submitted comprehensive representations.

Voice of the Child

The paper on Enhancing the Participation of Children and Young People in Proceedings has been circulated to the local Family Justice Councils and a shorter version will be published in Family Law in May. The Committee will be tendering for a new provider to help it engage with young people to ensure that their views are fed in to the Council.

New Committees

It was agreed that a committee looking at Alternative Dispute resolution should be established. Its membership and how its work will feed into the work of the main committees of the FJC will be discussed with the Executive Committee. It was also agreed that a Working Group should be set up to look at how best to take forward family involvement, initially in the public law arena.

Projects

The Council will establish a committee to agree the criteria and vetting processes for proposed projects or research and to review all project and research requests from committees and make recommendations to the Council. The members will be Danya Glaser, Judith Masson and Martyn Cook and it is expected that the committee will conduct its business via e-mail and telephone.

CRITERIA FOR ASSESSING REQUESTS

In considering projects or research for approval, the Council will consider requests from Committees that:

- (a) further the aims and objects of the Council
- (b) seek to inform improvements to the family justice system.

The Council will not fund projects or research that are considered to be the responsibility of other organisations or agencies.

Where a project or research is being considered that directly or indirectly benefits a member of the Council then to ensure transparency the member:

- (a) must declare an interest at the commencement of the discussion of the agenda item
- (b) consider whether it is appropriate for them to remain in the meeting during the discussion on the item or whilst the decision is being taken.

PROCESS AND TIMING

Each Committee must submit, by December, a project brief for each project setting out:

- (a) scope
- (b) methodology
- (c) timing and expected completion date
- (d) cost and timing of expenditure
- (e) expected outcomes
- (f) proposed reporting and publication.

The Projects and Research Committee will consider each project brief and make a recommendation to the January Council meeting.

There will be initial consideration and recommendation at the Council meeting in January, with the final decision taken at the Council meeting in April following agreement of the Council's budget.

Note: It is assumed that money is included in the FJC budget, and that budgeted expenditure has to be incurred during the financial year.

It was also agreed that there should be an area on the Council's website giving details of projects and research that the Council has undertaken or funded.

Amazon update

The Council has employed Amazon Public Relations to raise its profile and update its website. The company sent out a letter to editors from Jane Craig on behalf of the Council, which was published in the Independent regretting the Government's decision not to proceed with the Law Commission's recommendations on cohabitation. The company will also work on key messages and identify spokespeople for the Council on varying issues. They will particularly assist with improving communications with other constituencies within the Family Justice System.

It was noted the the DVD for victims of Domestic Violence which was partly funded by the Council has won an award for public information films.

Dartington 2009

Lord Justice Thorpe informed the Council that planning would shortly begin for the 2009 interdisciplinary conference and he would welcome suggestions for topics. The planning group will hold its first meeting shortly. Lord Justice Thorpe acknowledged the great contribution made to the Dartington conferences by this group which includes a number of distinguished contributors from inside and outside the Council.

Local Family Justice Councils

It is hoped that from the next financial year, the budget allocation for Local Family Justice Councils, excluding staffing, will come directly under the control for the FJC secretariat. This will enable the Secretariat to allocate funds for events. For the current year, funding remains with Area Directors. After discussion, the Council agreed that to provide clarity on funding the Council would push for a common understanding among HMCS regional and Area Directors that each local Family Justice Council should receive £4000 for training events with uplift for large population centres. The Secretariat proposes to produce a handbook for administrators and to hold a second event for local fjc administrators following the successful one held in 2007. This is likely to be in the autumn. There is still a big issue around communication; some local Councils do not supply any information or minutes to the Secretariat making it difficult to be aware of their activities, or, of good practice which might be usefully disseminated to other areas. The Council agreed that the national FJC should be prescriptive as far as the process of the management of the local FJCs was concerned but should offer only guidance and suggestions to LFJCs concerning events. A further attempt at a newsletter should be made and a proper communications strategy should be implemented for communication between the centre and the locals and vice

versa. It was noted that LFJCs were well placed to collect data from their own areas, particularly through their local authorities.

The Young Peoples Group

At its last meeting the Voice of the Child Group had agreed that there should be a tendering process to find a provider for a new representative group of young people to feed their views to the Council. It is intended that this will be done via CROA (Children's Rights Officers and Advocates) website and that applications to tender will be invited. The process will begin in May with the hope that a new group will be identified by September. A certificate, signed by the President, will be sent to all the members of the NYAS group to thank them for their valuable contribution to the work of the Council.

Impact of HMCS guidance on data handling on the work of the Family Proceedings Courts.

Changes in guidance have led to practical difficulties for magistrates in obtaining papers for court hearings in advance. The requirement is for a tracked delivery system, which is causing difficulties when delivery occurs at home addresses during office hours. Practice in different areas varies; in some places magistrates are being required to collect papers whereas in others they are being sent via special delivery. The Senior Presiding Judge has written to Mark Ormerod expressing concern and the matter has the close attention of the Ministry of Justice which will look at the need for more clarity on the guidance.

Business Plan

A draft Business Plan was before the Council and would be further discussed by the representatives of individual committees. **(A final version has now been sent to Ministers for approval).**

Any Other Business

Teresa Hallett raised the issue of the use of experts from abroad. It was agreed that this would be referred to the experts committee for discussion.