



FAMILY JUSTICE COUNCIL
MINUTES OF THE MEETING HELD
MONDAY 26TH JANUARY 2009

Present:

The Right Honourable Sir Mark Potter (Chair)

The Right Honourable Sir Mathew Thorpe (Deputy Chair)

Mark Andrews, Justices' Clerk
Professor Sir Al Aynsley-Green, Children's Commissioner for England
Annabel Burns (DCSF)
Stephen Cobb QC, Family Barrister
Martyn Cook, Family Magistrate
Jane Craig, Family Solicitor
Nicholas Crichton, District Judge, Magistrates' Court
Anthony Douglas, Cafcass
Sheridan Greenland OBE, Ministry of Justice
Carolyn Hamilton, Office of the Children's Commissioner for England
Teresa Hallett, CAF/CASS CYMRU
Keith Ingham, Welsh Assembly Government
The Honourable Mrs. Justice Eleanor King
Sarah Kovach-Clark, Legal Services Commission
Professor Judith Masson, Bristol University
Marilyn Mornington, District Judge
Her Honour Judge Lesley Newton
Jeremy Oppenheim, Home Office
Khatun Sapnara, Family Barrister
Beverley Sayers, Family Mediator
Christine Smart, Cafcass

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

Apologies:

Simon Bennett, Department of Health
Katherine Gieve, Family Solicitor
Elizabeth Gillett, Child Mental Health Specialist
Bridget Lindley, Consumer Focus, Parent Interest
Dr. Rosalyn Proops, Consultant Community Paediatrician

Announcements

The Chair welcomed new members of the Council:

Mrs. Justice Eleanor King has replaced Mr. Justice Bodey as the Family Division High Court Judge member of the Council and has also taken over as the Chair of the Money and Property Committee. Mr. Justice Bodey has now moved to the JSB.

Mark Andrews, Deputy Justices' Clerk to the Merseyside FPC has been appointed to the Council to replace Elaine Laken who has retired.

Professor Carolyn Hamilton has rejoined the Council as the representative of the Children's Commissioner.

Dr. Elizabeth Gillett, unfortunately unable to attend the meeting, has been appointed as the Child Mental Health Specialist to replace Dr. Danya Glaser who has retired.

The Chair has sent formal letters of thanks on behalf of the Council to the retiring members.

Paul Clark, Director of Children's Services at the London Borough of Harrow, has tendered his resignation from the Council. On the Council's behalf the Chair has written to thank him for his contribution to the work of the Council. A recruitment campaign will commence shortly to secure a replacement. The field has been widened to include Assistant and Deputy Directors of Children's Services and members were asked to pass any names of possible candidates to the Assistant Secretary who would ensure that they were sent an application pack.

Marilyn Mornington has resigned from the chairmanship of the Domestic Violence Working Group but remains a member of the Council. The Council recorded its thanks to her for all her work and her outstanding contribution in this field. District Judge Azmat Nisa who sits at Kingston upon Thames and is also a member of the Diversity Committee has agreed to take on the Chairmanship of the Working Group.

Minutes of the last meeting

These were approved, subject to the following amendment on page 6. The penultimate paragraph should read: "It was agreed that Beverley Sayers would meet with Sarah Kovach-Clark to discuss the role of mediation referrals to contact centres."

Matters arising

The new HMCS representative on the Council will be Clare Pillman, Regional Director with responsibility for Family. She will not regularly attend meetings but Sheridan Greenland, as MoJ representative, will refer any matters to her as they arise.

Multi Agency Risk Assessment Conferences (MARACs)

The use of MARACs in the family justice system was discussed by the Domestic Violence Working Group at its last meeting and it was agreed that referral to MARACs in family cases raised complex issues which should be referred to the Family Criminal Interface Committee as the more appropriate forum. This has been done.

The FCIC met in October when it discussed the Domestic Violence and Victims of Crime Act 2004 and it will be doing more detailed work on figures for applications and service of orders on which it will seek the assistance of local FJCs. It will next meet in April 2009 and the FJC will be represented at that meeting.

Following the last meeting of the Council in October, District Judge Mornington and HHJ Newton had attended a meeting with Bridget Prentice to raise concerns about the DVVCA. The meeting had been a useful one and there would be a further meeting following the review (in March) of the Manchester protocol with the police on service of orders.

Contact Centres: Funding and Commissioning/LSC consultation

Following the discussion at the October meeting, the FJC had submitted a formal response to the consultation issued by the LSC on proposed changes to family Guidance in the LSC manual. In early December, the LSC issued its revised guidance, which contained clarification on a number of topics. The LSC has postponed until April 2009 the changes in relation to the costs of assessments of supervised contact to allow time for contact centres to consider their sources of funding more generally. It was noted that considerable concern still remains about funding for contact centres.

Referrals from the Family Procedure Rule Committee

The paper being produced on representation of parents in care proceedings with learning difficulties or other disabilities will be discussed at the next meeting of the Children in Safeguarding Proceedings Committee when it is expected to be finalised.

It will then be presented to the Council at its April meeting. There will also be a paper at the Dartington Conference on the topic.

No consultation has yet been issued on Sections 84-86 of the Adoption and Children Act 2002.

The UN Convention on the Rights of the Child.

Sir Al Aynsley Green gave a presentation to the Council on the Convention and the review undertaken in 2008. The UN reviews performance of signatories every 5 years and the 4 Children's Commissioners provided a report to that review, as did children co-ordinated by the Children's Rights Alliance. In 5 out of 6 indicators: Poverty, health, family relationships, risky behaviour and low expectations this country scored badly. The concluding observations issued by the UN Committee on the Rights of the Child commended progress that had been made but voiced concerns about areas in which it considered that the Government could do better. It commended the withdrawal of reservations to articles 22 (asylum seeking children) and article 37 (young offenders) but regretted the failure to implement recommendations made in 2002. Sir Al regretted that there was no systematic awareness of the Convention and noted that the Scandinavian countries take a different approach to the UK government, embedding the rights of the child into domestic legislation. He referred to the report from Barnado's 'Breaking the Cycle, Believe in Children' which highlights the work done to prevent children going into the criminal justice system. He noted the use of the 'mosquito' which produces a sound inaudible to the adult ear but which is extremely uncomfortable for children and adolescents and which is being used in 5000 locations throughout the country to discourage young people from gathering. This is an indiscriminate deterrent which fails to tackle the root cause of the problem.

He asked whether the family courts were doing enough to highlight the rights of child and what more they might do.

The council thanked Sir Al for his stimulating and thought provoking presentation and discussed what it might do to take this forward. Keith Ingham noted that in Wales, consideration to the convention is given in all new policy and any legislation has to be compliant. All agreed that the key measure would be to incorporate the charter into legalisation but agreed that in the shorter term, enhancing knowledge of the charter within the family justice system would be helpful. It was agreed that Professor Hamilton would be asked to identify particular issues within the Convention that are specific to the family justice system in order that the Council may consider how best to progress work on this area, and which committees should take this forward. Keith Ingham will provide information from the Welsh perspective.

Local Family Justice Councils

The event for administrators was held in Manchester on the 4th November 2008. Only 15 of the local Councils were represented, which was a disappointing turn out. It seems that the low attendance rate is largely due to the pressure on administrators

who all have other roles to fill which sometimes prevents their release for LFJC events. It was agreed that the sponsors should be given a list of those who did not attend so they can take this up with individual Councils to see what might be done to improve matters. The first edition of the newsletter was very well received and the Council recorded its congratulations to Paula for the excellent work. Communication generally with the local councils had much improved and responses from them are also improving. Work on the FJC website is underway and more information about local FJCs will be included on the updated site.

Cafcass update

Anthony Douglas spoke about the pressures faced by Cafcass. The review of the Private Law Programme (see also item below) aims to introduce a common approach to conciliation and the first appointment and both Anthony and Bruce Clark are involved with the working party on the Private Law Programme. Anthony pointed out that the lack of consistency of practice in England adds to Cafcass' difficulties. Rates of care vary four or fivefold among the local authorities in England. He cited statistics showing that in 2004 the average time spent on s31 cases was 133 hours compared with 150 in 2008. Average time spent on rule 9.5 cases in 2004 was 75 hours, compared to 100 in 2008. In 2004 the average time on s7 reports was 25 hours which had risen to 50 hours in 2008. The Baby P case had had a big impact on the numbers of care cases and there had been an increase in pre proceedings work. There is pressure on Cafcass resources and the variation in different areas for s7 reports (70-80% in some areas, compared to 10% in others) and r9.5 orders (26% to 0%). This degree of variation makes planning difficult. Anthony informed the Council that the quality of practitioners across the family justice system also varied. Cafcass is working across its 21 service areas to introduce versions of their operational model customised for local practice to address delays.

Cafcass will concentrate on its core statutory responsibilities and focus on safeguarding in both public and private cases. No delay in allocation is justifiable and the aim is that allocations will be done immediately, even if sometimes to a duty officer. Prior to the first hearing in private law cases safeguarding checks and some interviews will be carried out in order to provide an analysis regarding safeguarding at the first appointment and by the next hearing assessment will have been completed where needed. At least 50% of cases have a serious safeguarding concern. He emphasised that Cafcass was greatly assisted by specific requests when being asked to produce reports under s7, which enabled them to focus on these areas. He said that Cafcass would work with the LSC to ensure the greater use of mediation.

With reference to Public Law cases he said that Cafcass had struggled in the last few weeks, not least because of the large number of new public law cases, particularly in London (120 new cases) which were taking up to two weeks to allocate. He aimed to guarantee allocation within 2 days and to complete case analysis by the Case Management Conference in every case. In these cases there may be some scope to look at better use of time of officers, for example attendance at hearings.

Nicholas Crichton observed that there is a resources issue: at Wells Street there are a number of public law cases which have not got a guardian allocated by CMC stage and in private law cases the time for reports at 16 weeks has not reduced. Mark Andrews said that in Merseyside the demand for s7 reports has collapsed and officers are involved early, undertaking short pieces of work after the first hearing, a model which can work well.

Anthony said that a clear uniform model was required, a system that regulates time spent to the resources available. He noted that Cafcass proposes to start actively contacting parties in advance of the first hearing when undertaking safeguarding checks to produce better information. The time taken by individual police forces to respond to enquiries still varies considerably

Concerns were expressed by some Council members about additional delay caused by the requirement that practitioners must submit their reports to managers for preliminary reading. While accepting the need to quality assure, they asked whether this could be done in other ways. Anthony explained that the quality assurance system had been introduced to identify any inadequate reports and said that this should not build in any delay. He informed the meeting that unless recommendations were dangerous, there should be no question of review causing delay in filing. In response to questions he emphasised that reports should make clear recommendations.

The meeting thanked Anthony for his helpful summary of the pressures Cafcass was under and the work being done to address them.

Revised Private Law Programme update

The working group is continuing to look at the draft programme in the light of the comments received from stakeholders. It is focusing on work up to the first hearing and will emphasise the use of mediation. Pilots will be run. In some areas the LSC provide leaflets giving details of local mediators and it is hoped that this system will be expanded to other areas. Discussion of this topic was linked in with discussion on the next agenda item.

Mediation

Beverley Sayers introduced the papers which had been circulated from the recently formed ADR Committee. Lord Justice Thorpe noted that the FJC had not been, until recently, particularly pro-active in the area of mediation and he congratulated Beverly on the work she had done prior to the first meeting of the Committee.

On behalf of the FJC Beverley had supported a research proposal put forward by Exeter University for longitudinal research into mediation outcomes.

A further paper was circulated to the Council setting out the changes in the family mediation profession.

A further paper on Working in Partnership with Cafcass was also circulated. It was noted that in some areas there are schemes to have duty mediators present and funding from the LSC is hoped for more leaflets and posters to promote the knowledge and use of mediation. The paper will be further discussed at the next meeting of the ADR Committee, which Bruce Clark will attend on behalf of Cafcass.

The LSC will pilot a mediation duty scheme for initial assessments and will be funding contact activity meetings. It was agreed that it would be very helpful to have a link with mediation on the Private Law Programme working group.

LSC Consultation on Civil Bid Rounds for 2010 Contracts

The Council had noted the concerns raised by NYAS about potential implications on their work following the proposals in this consultation. Sara Kovach-Clark informed the meeting that the LSC had met with NYAS before Christmas and following discussions it was likely that changes would be made to take the position of NYAS into account and the LSC would need to think again about this and further meetings with NYAS would be held. The Council also expressed concern about the position of sole practitioners who would be unable to bid for contracts. Sara said that the LSC considered that this would apply to a small number and that risk to access in each area would be reviewed and the proposal withdrawn for areas that would be at risk. Council members were anxious to point out that such risks do not apply only to rural areas and cited Bristol as an example. Cases with large numbers of parties require sufficient numbers of firms. Fewer firms not only limit representations but put pressure on court listing because solicitors are involved in more than one case at a time.

The FJC will put in a formal response to this consultation within the next three weeks and Sarah agreed that the LSC would accept this, despite the closing date having passed. She added that she would liaise with the Secretary to discuss better communication between the LSC and the Council to ensure that appropriate information about relevant consultations was available to the Council.

Proposed programme for the conference 27th April 2008

The programme was approved with some minor timing alterations. It was agreed that delegates should be asked to come prepared with examples of one thing that their local FJC does well, sharing best practice and communication strategies. There would then be time built in for discussions and feedback on these topics.

Update on Bearing Good Witness

Lord Justice Thorpe expressed his disappointment with the failure of the programme board to meet on a regular basis. This prevents discussion of issues that have arisen. It was agreed that Dr. Tanner, who chairs the Programme board should be invited to an FJC meeting. In the absence of any attendance from the Department of Health at this meeting, the Council would write to Dr. Tanner, expressing its concern about the absence of meetings. It is hoped that a Department of Health representative may attend at the next meeting. The matter would be discussed at the next meeting of the Experts Committee due to be held later today.

Family Justice in View

The Council welcomes the decision to make the family courts more open but has major concerns about the timescale. The Government has indicated its intention to introduce the changes by the beginning of April but this will leave insufficient time to deal with many of the points such as rule changes and accreditation, together with the practical arrangements for courts. There has been no time built in for consultation on the draft rules, which are to be seen by the Family Procedure Rule Committee in February. The possibility of delay to cases if there are appeals concerning press access is of great concern. The Council considers that it should write to the Ministry of Justice expressing the view that over hasty introduction of these long awaited rule changes risks avoidable problems.

Family Law in Australia

Members had seen copies of press article suggesting that reform in Australia presuming that parent should have equal shared parenting responsibility is having unintended consequences for children. It is noted that Professor Patrick Parkinson will be addressing the Resolution International Conference in July, on Family Law and the Indissolubility of Parenthood.

Reports from Committees

Executive

The Executive Committee has continued to undertake its management role. It has approved the way forward for recruiting a replacement for the Director of Children's Services which is now vacant and has approved the draft programme for the April conference.

Children in Families

The Committee devoted its most recent meeting to considering and discussing the draft revised Private Law Programme on which it had been invited to comment. It provided a full response to the Judicial Working Group. It will be commenting on the consultation on the Family Procedure Rules and the consultation from the Legal Services Commission on Family Legal Aid funding.

Children in Safeguarding Proceedings

The Committee has continued to work on the paper on parents in care proceedings with learning disabilities. It sent a submission to Lord Laming for his progress report on safeguarding following the Baby P case. It will be taking forward work on Independent Reviewing officers and contributing to the responses to the two consultations described above.

Diversity

The Committee held a meeting in Manchester on the 23rd October, attended by representatives of six local FJCs from the surrounding area. The issue of provision of interpreters was discussed and will form a major part of the Committee's work in the

forthcoming months. Planning for the Forum for Community Groups is continuing. The Committee has been pleased to make contact with the Diversity and Community Liaison judges who are based in courts throughout England and Wales and also with the relevant officials in the judicial office.

Domestic Violence

The Domestic Violence working group has not met since the previous FJC meeting. Its new Chair will be District Judge Azmat Nisa and it will be continuing with the projects it has highlighted in the business plan. It has formally referred the question on the use of MARACs in the family justice system to the Family Criminal Interface Committee.

Education and Training

The Committee has not met since the last Council meeting. Work is continuing to finalise the Mapping Exercise. The Committee will meet in February when it will consider further the projects with the UK Borders Agency and SCIE.

Experts

The Committee will meet shortly and will continue with its consideration on how best to evaluate the contribution of experts to family proceedings. Once the draft paper on the use of experts from overseas in family cases has been finalised it will be sent to Family Division Judges for comment and consideration. Good progress is being made in the mini pupillage scheme, with direct contact having been made with a number of experts and a new draft of a best practice guide for London before the Committee for discussion.

Money and Property

The Money and Property Committee has responded on behalf of the Council to the recent stakeholder consultation on Routes of Appeal from the magistrates and it will be responding to the current consultations on the Family Procedure Rules and Civil Court Fees. It hopes to produce a good practice guide for ancillary relief for launching at the LFJC conference at the end of April. It will also be following the progress of the Co-habitation Bill currently in the Lords.

Voice of the Child

The debate on enhancing the participation of Children and Young People was a great success and received a good deal of coverage in the legal press. A pod cast is available on the FJC website. The committee's focus is now on taking forward the next steps. It is working to produce short and simple guidance for the President's approval, which will then form the basis of interdisciplinary training events. It is also

hoping to forge links with a new young people's reference group and has contacted RAPP (Rights and Participation Project) in Hull to help facilitate this.

It was agreed that the Secretariat will in future circulate key documents from committees and working groups to the members of the Council. The submission from the Children in Safeguarding Proceedings Committee to Lord Laming would be circulated.

Business Plan

Committees are asked to consider their individual business plans and update them for the year ahead. Committees are asked to focus on three or four priorities.