



**Family Justice Council**  
**Minutes of the meeting held 19<sup>th</sup> October 2009**

**Present:**

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

Mark Andrews, Justices' Clerk  
Sue Berelowitz, Office of the Children's Commissioner for England  
Annabel Burns, DCSF  
Bruce Clark, Cafcass  
Martyn Cook, Family Magistrate  
Jane Craig, Family Solicitor, (Private Law)  
Katherine Gieve, Family Solicitor (Public Law)  
Elizabeth Gillett, Clinical Psychologist  
Nick Goodwin, MoJ  
Teresa Hallett, CAF/CASS Cymru  
Carolyn Hamilton, Office of the Children's Commissioner for England  
Keith Ingham, Welsh Assembly Government  
The Honourable Mrs. Justice Eleanor King  
Sara Kovach-Clark, Legal Services Commission  
Bridget Lindley, Consumer Focus, Parent Representative  
Professor Judith Masson, University of Bristol  
District Judge Marilyn Mornington  
Her Honour Judge Lesley Newton  
Dr. Heather Payne, Paediatrician  
Deborah Ramsdale, Staffordshire County Council  
Beverley Sayers, Family Mediator

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

## **Apologies:**

Nicholas Crichton, District Judge Magistrates' Courts  
Alison Russell QC, Family Barrister  
Khatun Sapnara, Family Barrister

## **Minutes of the last meeting.**

The minutes were approved without amendment.

## **Matters arising**

The Ernst and Young report commissioned by the LSC has been given to the Secretariat and will be circulated.

The paper on Guidelines for judges speaking to children will be considered at the January meeting of the Council

There were no other matters arising which were not on the agenda.

## **Media attendance in the family courts**

The Chair recalled the concern expressed at the last Council meeting about the suggested way forward on reporting proceedings in the family courts. Following the meeting, a memorandum summarising these had been drafted for the meeting of Family Procedure Rules Committee. The Rules Committee had echoed many of the concerns expressed by the Council. A memorandum was sent by the FPRC to Ministers, a copy of which is circulated with these minutes. The proposed rules were subsequently withdrawn for further consideration and for a report to go to Ministers. The Lord Chancellor had been unable to attend the ministerial meeting shortly after the July Council meeting and transparency was not, therefore, discussed. The FPRC remained concerned that it would be faced with a short period in which to enact rules, given the very tight timescale for the Bill.

Sue Berelowitz reported that the Children's Commissioner was about to embark on research on the views of children on these issues, which will be undertaken by Julia Brophy. On behalf of the Ministry of Justice, Nick Goodwin updated the Council, explaining that many stakeholder meetings had been held over the summer to discuss the proposals and hear their views. The proposals have changed over the summer, and have moved away from the Youth Courts as a model. All representations from the stakeholder meetings have been put to Ministers and meetings at ministerial level are expected very soon, and will include a meeting between the President and the Lord Chancellor. The current proposals are that accredited media representatives will be able to report proceedings but there will be an automatic and indefinite bar on the identification of child parties and their whereabouts. Medical records, psychiatric reports and the views of the child will not be able to be reported. Anonymity will be given to all authors of reports which are provided as part of ordinary duties. This will include social workers and treating physicians. The authors of paid expert reports will be named.

Information not on the banned list will be assumed to be reportable unless an application is made to the court. These restrictions will apply to all proceedings up to and including placement proceedings. There are no plans to report adoption proceedings. There is a catch all provision that gives provision for an application to restrict reporting if there are concerns about the welfare of the child. The Queen's Speech is expected to be in late November and the Bill will be introduced soon thereafter. In response to questions Nick stated that the press would be able to apply to see documents which are not on the banned list and that implementation issues were being considered. A full impact assessment will be contained in the Bill. The President emphasised that any impact assessment must take into account the additional court time required to deal with such applications, many of which are likely to be contentious. If such applications result in adjournments and extra time needed for cases, costs will fall on solicitors, exacerbating the financial issues they are already experiencing.

It was noted that feedback from the Experts Committee of the FJC indicates that many experts currently doing this work would cease to do so if the current proposals are introduced. Heather Payne expressed concern about the effect on the child in the case and also queried how non print media and publishing on the internet could be regulated. In response to questions, Nick said that the pilot on publication of anonymised judgments would be starting within the next two weeks but that there would be insufficient time for any feedback before the legislation is introduced. Concerns were expressed that the pilot would place added pressure on legal advisers who would be expected to anonymise magistrates' judgments. Nick confirmed that resources are being made available to ensure that the pilot can be done well.

The Council plans to host a debate at the Inner Temple in London on the 9<sup>th</sup> December to discuss the issues and awaits the publication of the Bill.

### **Lord Laming and the government response**

The publication of Francis Plowden's review of fees is expected imminently. Work on the introduction of Lord Laming's recommendation for a system wide target is underway. It is expected to take the form of a series of Key Performance Indicators owned by individual departments, within which there will be measurable elements for each department or agency. The work is complex, involving many departments and agencies and there are difficulties involved, particularly in those areas which involve more than one agency i.e. local authorities and the time at which court proceedings are commenced. It is hoped that a draft will be announced in November or December with a view to consulting in spring 2010 for implementation in April 2010.

The existing 40 week target for the processing of care cases is being moved away from and a timetable for the child, to be defined at the beginning of court proceedings, will become the norm. Heather Payne asked whether any of the KPIs would relate to health professionals and Katherine Gieve noted that in some cases, local authorities are dependent on health work over which they have no influence. HHJ Newton said that allocation of sitting days to the judiciary was a key area which needed to be examined to ensure that the maximum amount of time was being made available for family cases. There is spare capacity in the justice system, but the current allocation of resources to criminal and civil work limits the time available for

judges to hear family cases. Annabel indicated that Lord Laming's targets were making the point that individual bodies were part of bigger systems and he was particularly spotlighting the position of children who were on the edge of care.

In response to questions about the role of the National Safeguarding Delivery Unit, Annabel and Deborah (who has been seconded to the unit) explained that Sir Roger Singleton sits on the Laming programme board but he is not bound by their decisions. He reports directly to Ministers and, having been looking at local authority areas of work is now turning to the court side of the work, including the overlap between public and private law. The work programme for the National Safeguarding Unit has not yet been published.

Judith Masson asked about targets and whether it would be possible to link records from local authorities and courts in order to assess the impact on children and make it possible for all areas to prioritise the same group of children. This would involve generating a child's number earlier in the process and ensuring that was used through all agencies. Target setting must take into account all the issues.

Welsh members noted that the recommendations made by Lord Laming apply to England only, but wished to be kept informed of progress. Nick Goodwin would check when the judiciary would be consulted.

### **Proposed reform of s41 of the Children Act 1989**

Members had received a copy of a letter from NAGALRO addressed to HHJ Newton as Chair of the Safeguarding Committee, expressing their concerns about the proposals for reform of s41 and the matter had been discussed at the last meeting of the Committee. Katherine Gieve explained that the Safeguarding Committee were worried about the implications of such a reform which would result in a permanent change in the role of guardians and their relationship to the Court. The Committee was puzzled as to why it was considered necessary to have permanent statutory change now. In the Committee's view the accountability of an individual guardian to the child and to the court is vital and replacing that will diminish the value of the guardians' role.

Annabel explained that no decision had yet been made about whether to make an amendment to primary legislation, but there was a concern about the effectiveness of resource use in the system. The current system had Cafcass accountable to Ofsted and to the DCSF and to parliament for delivery and expenditures, but did not give Cafcass the freedom to allocate its resource to best effect. When a Guardian is appointed by the Court this limits Cafcass' ability to manage its resource effectively. She noted that should a provision be included in the Bill, issues around continuity and accountability would need to be included. It is recognised that it is not in the best interests of the child for there to be changes. In response to a question about Cafcass' ability to manage guardians Annabel said that the problem was in holding Cafcass to account when they cannot deliver, either because of the demands of the court, or because the guardian does not see their affiliation as being to Cafcass. Members of the Council remained unconvinced and expressed concern that, in the current circumstances, Cafcass would wish to be able to send different guardians to appointments. Bridget Lindley said that families would be alienated and needed to be

engaged at the beginning of the process. Katherine agreed, saying that this was vital in the early stage of the care proceedings, and noted that she had dealt with a case in which the role of the duty guardian was only to look at the papers and not to talk to the parents. The value of a good guardian at an early stage was emphasised by members who said that they can be instrumental in resolving at least at least the threshold criteria, if not the entire case. Martyn Cook said that in FPCs there were often no duty guardians which led to adjournments or inappropriate reliance on the child's solicitor who might not have suitable experience and whose responsibility was not to act as the guardian.

The situation if more than one guardian was involved in a case might well lead to use of more resources rather than less, with handover information required or more time for each guardian to start afresh. Members considered that this proposal was premature and that more time should be allowed for the interim arrangements to work.

Bruce Clark said that the origins of a potential s41 amendment came 4-5 years ago from the inspectorate concerned with the issue of differential accountability and it was not Cafcass' idea. Now it was also about resources. He emphasised that there was no move to discontinuity and said that priorities must be given to the best use of resources. There has been a 30% rise in public law cases and a 16% rise in private law cases and an amendment to s41 could have assisted Cafcass. Bridget commented that the proposals seemed to be pulling in completely the opposite direction to the work currently going on around IROs which emphasised their individual roles. Members also emphasised that in their collective experience, cases in which guardians had to be changed were very rare and when it was necessary the process was not complex.

It remains to be seen whether the clause will be included in the safeguarding bill

### **Cafcass: way forward following the President's interim guidance**

This item was on the agenda at the request of the Safeguarding Committee following concerns raised at their last meeting about arrangements in the medium term after next April.

A substantial number of local arrangements have been made following the issue of the President's guidance. An additional £1.6m has been allocated to Cafcass to deal with the backlog in London. Bruce said that he was pleased to see how the various areas had determined local arrangements under the framework according to the issues in each area. For some this required only a light touch and for others it was more detailed. The proof will be if the new arrangements are utilised and the s7 backlog is dealt with. In many areas cases are being revisited and Cafcass is obtaining an update or the solicitors in the case are being invited to update. This enables the judge and the Cafcass office to consider whether the terms of the s7 order should be adjusted or directions fixed. There has been a falling away of 9.5 appointments which are back to 2007 levels and fewer Family Assistance Orders are being made. There has been an unprecedented upturn in the numbers of s31 applications and the scale and complexity of these will determine how far the backlog in private law can be eliminated.

In Wales there have been different arrangements but the increase in cases has been reflected: 51% public law and 11% private law.

In Private Law, Bruce said that the revised Private Law Programme has been successfully trialled in six areas and the Working Group will be recommending to the President that it should be fully implemented after the expiry of the interim guidance in April 2010.

Martyn Cook said that while London may have a chronic problem in terms of numbers of cases, areas outside London were also in difficulties and needed help. He expressed anxiety that 'normal service' would be able to be resumed after April and raised the additional problems that although courts were being pressurised to use contact activities as an alternative solution, the gaps in service meant that this could not solve the problems. Another round of commissioning is being pressed for to attempt to fill the gaps. Beverley raised the issue of the absence of details about mediation providers on the interactive map on the Cafcass website. Bruce said that local directories of providers had been produced for individual courts, but he would take the question of mediation information back to Cafcass.

### **Guidance on shared parenting**

This had been discussed by the Children in Families Committee. Guidance on the topic on the Families Need Fathers website caused some consternation, resulting in concern being expressed by a number of people. FNF published four sets of guidance: three on shared parenting for Cafcass officers, schools and sure start centres. (The fourth one was for litigants in person about appearing in court). An article appeared in the September edition of Family Law by Joan Hunt, Judith Masson and Liz Trinder expressing concern about the contents of the shared parenting guidance. Following the expression of concern it was removed from the Cafcass website and is currently being redrafted. Judith queried why such work was done without consultation with the FJC and wondered why, now that consultation was being undertaken, there was such a tight timetable and what the urgency for issuing the document was. Shared parenting is not a term of legal art and is not helpful in the context of a report to the court.

Jane said that the CiF committee considered that the guidance would create more problems that it would solve and that the Committee was seeking to commission a literature review into highly conflicted cases, on which this document does not focus. Bruce said that Cafcass welcomed comments on the guidance and that its purpose was to introduce what was and was not shared parenting and to provide case law and research. He noted that Cafcass issues much guidance to its staff on which it does not normally consult, since it is a matter for Cafcass through its board to decide how its staff are guided. The concern of the FJC remained that the push for this particular guidance had come from a pressure group. Bruce emphasised that this is a small piece of practice guidance only. The Council acknowledged that it was not appropriate for it to be consulted on every piece of guidance that Cafcass gives to its staff. However, given the sensitive and controversial nature of this particular document it should have been clear that a wider consultation with key stakeholders was required. The CiF committee will provide Bruce with comments, although it was agreed that these would not be submitted before the 23<sup>rd</sup> October.

## **The Family Justice Board**

A draft framework document had been circulated for members to comment upon. It was agreed that a form of memorandum of understanding between the two bodies would be helpful and that the FJC would like to see an obligation on the Board to keep it informed of what it would be considering to enable the Council to provide advice and feedback. It was noted that four members of the FJC are also members of the Board: The President, Nick Goodwin, Annabel Burns and Keith Ingham, which should enable good communication. It was agreed that the Family Justice Board should be a standing item on the agenda for the FJC and that the minutes of each body should be shared with the other.

## **United Nations Convention on the Rights of the Child and Family Law**

Following Sir Al Aynsley-Green's presentation to the Council in January 2009, Professor Carolyn Hamilton took the Council through her paper (attached). The Convention has not been incorporated into UK legislation and in the 18 years since it came into being there has been relatively little case law. The Council agreed that it was important for the Convention to become more widely known and considered by family lawyers. The Deputy Chair, and other members, encouraged Professor Hamilton to seek to publish her paper in Family Law.

## **Local Family Justice Councils**

The next conference for local FJC administrators will be held in Birmingham on the 23<sup>rd</sup> October, approximately half the administrators are expected to attend. Funding for training events will be allocated to the FJC secretariat with effect from the new financial year and draft guidance will be one of the topics for discussion at the conference. The Bar Standards Board has approved the FJC's application to become a training provider for the events held by LFJCs but, unfortunately, has refused to grant a waiver of fees. This could result in a large cost to the FJC and the Deputy Chair of the Council has written to Baroness Deech, who chairs the Board, to endeavour to resolve the issue.

10 local councils have expressed an interest in participating in the website proposals put forward by Devon and Cornwall and meetings with the web team are expected to take place soon.

Communications between the locals and the centre and between the locals themselves are very good and best practice is being shared.

## **Annual Report**

Draft general chapters had been circulated for comment and the individual chapters for each committee and working group had been seen and commented on. It is intended that the Annual Report will be published in early December.

It is hoped to publish all the good practice guides produced by the Council as part of next year's annual report.

