



Family Justice Council Meeting

Monday 29 January 2024

Member Attendees:

Chair: Mr Justice Keehan
Sir Andrew McFarlane, President of the Family Division
Mrs Justice Morgan,
HHJ Karen Venables, Circuit Judge
DJ Julian Hussell, District Judge
DJ Stewart Hughan, District Judge
Jenny Beck, Private Law Solicitor
Leyly Bogue, Department for Education
Rebecca Cobbin, HMCTS
Vinice Cowell, Parent and Family Rep
Maud Davis, Public Law Solicitor
Colette Dutton, ADCS
Angela Frazer-Wicks, Parent and Family Rep
Ruth Hay, Family Mediator
Professor Rosemary Hunter, Academic
Beatrice Longmore, Office of the Children's Commissioner
Bernadette MacQueen, Legal Adviser
Fiona Straw, Consultant Paediatrician
Luke Taylor, MoJ
Kate Thomas, Cafcass Cymru
Natasha Watson, Public Law Solicitor
Dr Sheena Webb, Child Mental Health Specialist

Secretariat:

Bee Ezete
Sophie Gowans
Daphna Wilson

Apologies:

Ms Justice Henke,
Daniel Foster, DfE
Simon Rowbotham, Barrister
Amy Shaw, CJC
Natalia Schiffrin, Magistrate
Barry Tilzey, Cafcass

Agenda item 1: Apologies and announcements

Announcements

1. We welcome the new District Judges to the FJC, DJ Julian Hussell, and DJ Stewart Hughan.
2. DJ Hughan will join the following Working Groups:
 - Domestic Abuse
 - Diversity & Inclusion
3. DJ Hussell will join the following Working Group:
 - Neurodiversity and the Family Justice System
 - Financial Remedies
4. HHJ Karen Venables will formally retire from her Judicial role on 2 February, she will continue on the FJC until October and will continue to sit in retirement on FDAC cases.

Agenda item 2: Minutes of last meeting and matters arising

5. Minutes of the last meeting were approved by the Council.
6. Most actions have either been completed or are contained within the agenda.

Agenda item 3: Business Plan Progress

Activity 1: Covert recordings working group

7. Natasha provided the final draft of the Covert Recording Guidance with the feedback from the Information Commissioner's Office (ICO).
8. The ICO were keen for the Council to highlight that when they determine the legality or otherwise of the processing of information, in this case covert recordings by family members, they have regard to the UN Convention on the Rights of the Child, with the welfare of the child being paramount. This dovetails with the guidance of the Council and a paragraph has been added to the guidance. Otherwise, the additions relate to the technical data processing.
9. Following on from the discussion at the last Council meeting, the Appendix for litigants now specifically references the illegality of recordings during court proceedings.
10. Jenny mentioned that she had received several enquiries about when the guidance will be available, demonstrating the interest in this topic.
11. The Chair asked Council members to read the final guidance and send any comments by email to Sophie/FJC before the Exec meeting on 26 February. The President and the Council thanked Natasha for all her work on the guidance.

Activity 2: Comms and Website Group

12. This will be dealt with at agenda item 7.

Activity 3: Domestic Abuse

13. The document Mapping the landscape of Domestic Abuse activity (research, policies, provisions etc.) in the Family Justice System, has been [published on the website](#) and referenced in the latest news section.

14. The Working Group's latest update:

- Non-molestation orders. Concerns have been raised about practices relating to applications for NMOs which undermine access to justice for vulnerable victims of domestic abuse. The group are pursuing discussions as to how best to address these issues.
- The QLR scheme. In the context of widespread concerns about the efficacy of the QLR scheme, and particularly the perceived unattractiveness of the scheme to relevant practitioners, the WG is considering research which might be undertaken to gain a national picture of how the scheme is operating.
- Disclosure of fact-finding judgments. The WG has scoped the issues relating to disclosure of findings of fact made in private law proceedings for the purposes of subsequent proceedings involving one of the parties, or of safeguarding children or adults who may be at risk. It intends to produce a brief discussion paper to be sent to Knowles J in the first instance.

Activity 4: Experts working group

15. Fiona updated the Business Plan with the work being undertaken by the group:

1. Training:
 - i. To plan and deliver multi professional training every 2 years in the form of a Symposium, next one to be held in October 2024.
 - ii. Newly appointed Judges are receiving training on experts, led by Williams J.
2. Experts Handbook: Recommendation of the Presidents report was: "An expert witness handbook or information pack for experts and lawyers should be commissioned." This is being progressed by a separate working group.
3. Reducing family court delays: Piloting a new Multi-Disciplinary Team (MDT) creating a Suspected Inflicted Injury Service pathway aiming to start in April 2024. This is a joint project between DfE and DHSC. Funding secured through the Treasury Shared Outcomes Fund.
4. Payment of experts: Sub-group looking to simplify payment of experts.

16. Regarding point three, Fiona is one of the doctors acting as consultants to the Department of Health and Department of Education on the pilots. The pilots aim to start from April. The multidisciplinary team will focus on head trauma. The idea is to provide the court with expert assessment more quickly and reduce the number of experts needed per case.

17. Fiona also mentioned that they were looking to run a pilot of Family Judges coming into hospitals to shadow medical practitioners, to give greater understanding of their safeguarding work. The Council thought that this sounded like an excellent idea.

Activity 5: Death by suicide

18. The final advice document was published on 9 October FJC website. [At Risk of Suicide: Information for professionals working within the court system \(judiciary.uk\)](https://www.judiciary.uk/consultations-and-projects/at-risk-of-suicide-information-for-professionals-working-within-the-court-system/).

19. Group has been officially closed.

Activity 6: Alienating Behaviours

20. The final draft guidance was approved by the Council and put out for public consultation on 24 August. Ninety-three responses were received from a range of organisations and individuals.
21. The Working Group are in the process of reviewing the responses and will next meet on 13 February to discuss the points raised.

Activity 7: Financial needs working group

22. As the Council is aware, the Law Commission is undertaking a scoping exercise on Financial Remedies on Divorce project. [Financial remedies on divorce - Law Commission.](#)
23. The Working Group are meeting with the Law Commission informally to feed into their scoping exercise on 6 February. There would be scope for further meetings if needed.
24. The Working Group will report back on anything the full council needs to consider. It was noted that the FJC has produced significant guidance on this area and that hopefully these will be considered by the review.

Activity 8: Medical Treatment

25. The Legal Aid Authority (LAA) has confirmed that although the means test has been removed the merits test remains for those parents of, or those with parental responsibility for, a child (aged under 18) facing withdrawal or withholding of life-sustaining treatment seeking representation. The Exec approved the update to paragraph 15 of the guidance to reflect this change in position.
26. It was agreed at the Exec in November that this group would reconvene to create an easy to read summary or flowchart to sit alongside the guidance. Natalia is to join the group.

Activity 9: Disclosure to Children and Young people

27. The Group received feedback on the flowchart's from Mrs Justice Knowles. The group updated the flowcharts and are working on a narrative to accompany the documents to manage applicant's expectations. The group will also explore how to make the resource more engaging for young people including consulting with the FJYPB.

Activity 10: PAUSED – Reviewing guidance on Judges meeting children.

Activity 11: Neurodiversity

28. The group is looking at the structure of the guidance and at the next meeting of the WG will agree the guidance headings and divide up the work to start drafting.
29. Jenny thanked DJ Hussell for joining. The first piece of guidance will be aimed at Practitioners and will aim to pull together existing resources, highlighting best practice. Jenny has started drafting the section on the law and the group should have the first draft of the guidance by the April meeting.

Activity 12: Diversity & Inclusion Scoping Group

30. The group's initial meeting took place in December. The group discussed what resources currently exist including the Equal Treatment Bench Book.
31. The group talked about how feedback might be sought from court users on how they experienced the family justice system. Also discussed how the FJC might improve the Diversity on the Council.

Agenda item 4: Family Justice Board

32. Luke Taylor provided a verbal update on the work of the FJB. The Board last met on 6 November. The Board Looked at delay in private law in more detail and at the longest running cases. There was an update from the Department for Education (DfE) on the mutual venture report.
33. The FJB was looking to work with partners and to set a revised list of priorities for the new financial year. They want to set more granular targets at an official level. Luke said they are not yet in a position to publish the Mutual Ventures report.
34. Leyly (DfE rep) said they could provide the Council with an advance copy of the mutual ventures report on a confidential basis. This was a report on the financial impact on delay and the wider impacts, it included recommendations on how to reduce delay.
35. Luke says that the FJB continues to look into the oldest cases in the system, 100 weeks or more, and the areas with the longest delays to understand the reasons and see what can be done to reduce delay. This forms part of the strategies for next year.
36. HHJ Venables asked whether there was any mechanism to assess the quality of outcomes for children.
37. Luke said that the work on long running cases focuses on the reasons for delay. He appreciated that outcomes were key but not something that was accommodated in this specific review.
38. Leyly shared that from DfE perspective, we did a big piece of work with Cafcass and ADCS and collected data on 52 weeks or more in Private and Public law, the findings from that analysis led into the bids for funding including the Experts pilot. She offered to share the findings of that work with the FJC.
39. Natasha said that one thing always struck her was the number of hearings in private law. She would urge the need to drill into why some hearings are not effective and need to have more hearings. For instance, if there are more hearings because there is a litigant in person, it demonstrates the false economy of litigants not being able to access representation.
40. Sheena said from her experience as a therapist she has seen the impact of repeat proceedings on children and families with little attention to the mental health of the children – she would be interested at look into that question more.
41. The Chair said that it sounds like this might form a new work stream. Propose a scoping group be formed to look at the mental health of children and young people. FJC members volunteered to take part; DJ Hughan, Sheena Webb, Angela Frazer-

Wicks, Fiona Straw, and Kate Thomas. It was noted that the group would need to engage with the FJYPB and the Public Law Working Group on this area.

42. The President referred to the MoJ response to the consultation on early resolution. The MoJ have proposed to improve provision for separating parents without them having to come to court, which is very welcome. The government will also pilot an early legal advice scheme. If it all comes to fruition it could have a substantial impact on Private Law.

Agenda Item 5: FJC Events

Debate

43. As you are aware, the Annual Debate was held on 7 December 2023, where the motion was 'Should cohabiting couples have the same financial rights and responsibilities as those who are married/in a Civil Partnership?'. Following the well-balanced debate, the in-person and online audience voted as follows: 48 for the motion to 41 against.

44. The speakers were excellent and the event was well attended.

FJC Conference:

45. The date has been confirmed as 5 March taking place from 09.30 to 16.30. The venue has been booked in Birmingham.

Bridget Lindley Lecture:

46. Jacky Tiotto (Cafcass CEO) will give the Bridget Lindley Lecture. This is the only part of the conference that will be live streamed. Title: 'A light or a sound in the distance – finding a clearer way through private family law proceedings'

Conference title

47. We thought it might be helpful to the speakers when preparing their sessions if we had a conference title that draws together the session topics. As you are aware, the overarching topic is children and young people in the family justice system.
48. Current suggestion: *Children and Young People: Promoting a Holistic Approach in the Family Justice System.*
49. The Chair asked the Council members to have a think about the title and let the secretariat know.

Speakers

50. Confirmed:

- Impact on babies/infants – Gerry Byrne.
- Attachment and the Family Courts – Dr Danya Glaser.
- Transition from foster care to adoption - Professor Elsbeth Neil.
- Writing Judgments for Children - Helen Stalford (University of Liverpool) and Kathryn Hollingsworth (Newcastle University).
- FJYPB – will lead their own session and will take part in the 'Cliff Edge' about care leavers approaching eighteen. Including young people with care experience.
- DoLs and the impact on teenagers – Nuffield Family Justice Council.

51. Rosemary wanted to ensure that the conference covers private law as well as public law.
52. The Council discussed the session that would be led by Gerry Byrne and that this could cover both private and public law, along with Danya's session on attachment.

Agenda Item 6: New Working Group Proposed - Re-start the Voice of the Child group.

53. At the last FJC Exec meeting it was proposed by Maud Davis that the FJC restarts the Voice of the Child Standing Group. The Exec agreed with this proposal and discussed that it would be important to find creative ways to engage with a diverse range of children, broader than FJYPB.
54. The proposal is for a scoping group to be formed to determine the remit and aims of the group. The group would need to look at what work is already being done elsewhere on voice of the child and what the FJC could add to this area.
55. The group would need to draft a term of reference for the group to be signed off by the FJC Exec or FJC.
56. The Council talked about the need for an enhanced role of the voice of the child and made reference to the United Nations Convention on the Rights of the Child (UNCRC).
57. It was agreed that a scoping group would be formed with Maud chairing. Group volunteers included; DJ Hughan, DJ Hussell, Jenny, Vinice, Kate, Ruth, Natalia, and Angela.
58. It was noted that this is a major work stream for the Nuffield Family Justice Observatory and the group should consult with them on this topic.
59. The President noted that Jenny has now been made the Chair of the NFJO. The Council shared their congratulations.

Agenda Item 7: Communications strategy

- Comms Activity feedback
- Update from the Comms and Website working group.

Comms Activity

60. A paper was shared of the latest engagement by Council members.

FJC Website Data

61. The top 5 most visited pages on the website from 24 September to 24 December 2023:
 - i. FJC homepage page (1838 views and 1269 users)
 - ii. FJC upcoming-events page (859 views and 614 users)
 - iii. FJC latest-news page (804 views and 493 users)
 - iv. FJC resources-and-guidance page (427 views and 295 users)
 - v. Member's page (334 views and 250 users)
62. Most visited Working Group page: Responding to allegations of alienating behaviour (314 views and 217 users).

Agenda Item 8: Research Update

63. Thank you to Rosemary for preparing the research summary.
64. Rosemary highlighted the following research and suggested they be invited to speak at future Council meetings.
- Rachael Gray, "Catastrophic": A qualitative exploration of survivors' experiences of expert instruction in private law child arrangements proceedings' (2023) 45(4) *Journal of Social Welfare and Family Law* 344.
 - Emma Hitchings, et al., *Fair shares? Sorting out money and property on divorce* (University of Bristol and Nuffield Foundation, 2023). <https://www.nuffieldfoundation.org/project/fair-shares-sorting-out-money-and-property-on-divorce>.

Agenda Item 9: AOB

A group is updating the FJC Capacity to Litigate Guidance 2018

65. HHJ Raeside has volunteered to lead a small group, which includes Malek Wan Daud, Joseph O'Brien KC, and Helen Clift from the OSPT, to update the guidance. The President has endorsed this proposal on the basis that any changes are presented to the FJC for their comments and approval. The group will present any drafts to the Council for consideration.

AOB

66. Beatrice shared that the Children's Commissioner has been commissioned by DfE on Deprivation of Liberty. They will be meeting with children and speaking to the family and professionals in cases. She asked the FJC members to let practitioners in their network know that this work is being undertaken.
67. The Chair thought that practitioners would be interested in sharing their views.

Item 10: Presentation on Separating families: Experiences of separation and support

68. The Council received an excellent presentation from Dr Jon Symonds (Bristol University) on Separating families: Experiences of separation and support (Nuffield Family Justice Observatory, November 2022).