

## **FAMILY JUSTICE BOARD MEETING MINUTES**

**7 May 2019 14:30 – 16:00, Portcullis House**

### **ATTENDEES**

#### **Chairs**

Lucy Frazer QC MP, Minister for Courts and Justice, Ministry of Justice (MoJ)

Nadhim Zahawi MP, Minister for Children and Families, Department for Education (DfE)

#### **Members**

Andrew Christie, Chair of Adoption and Safeguarding Leadership Board

Teresa Williams, Director of National Strategy, Cafcass

Helen Watson, Association of Directors of Children's Services (ADCS)

Julia Gault, Deputy Director Family Policy, Department for Work and Pensions

Katy Willison, Director of Children's Social Care, Practice and Workforce, DfE

Kevin Sadler, Deputy Chief Executive, HM Courts and Tribunals Service, and Chair of the Performance Improvement Sub-Group

Nicola Hewer, Director Family and Criminal Justice Policy, MoJ

Nigel Brown, Chief Executive, Cafcass Cymru

Albert Heaney, Director, Social Services, Welsh Government

Yvette Stanley, National Director, Social Care, Ofsted

#### **Observer**

Rt Hon Sir Andrew McFarlane, President of the Family Division of the High Court

#### **Apologies**

Jake Morgan – Association of Directors of Social Services Cymru

Isabelle Trowler, Chief Social Worker for Children and Families, DfE

## **ITEM 1 – Introduction, and minutes from last meeting**

1. Nadhim Zahawi opened the meeting, noting the success of the Family Justice Board's (FJB) national conference in March. He extended his greetings to Teresa Williams, and his thanks to Anthony Douglas for his contribution to FJB and his long and committed service. It was noted that the discussion would focus primarily on items 3 (private family law update); and 4 (update on the FJB work programme).
2. The minutes from the last FJB in January were approved without amendment.

## **ITEM 2 – Updates from FJB sub-groups**

### ***Family Justice Young People's Board (FJYPB)***

5. FJYPB representatives provided an update on their plans for their annual 'Voice of the Child' conference in July, which will focus on the mental health and wellbeing of children and young people in the family justice system.
6. They set out their five key priorities for 2019/20. In addition to hosting the conference, these include: working with the Department for Education to increase awareness of family justice issues in schools; working with Cafcass to ensure that the voice of the child is embedded into policy and practice; improving their communication strategy; and continuing to raise awareness of the effects of family proceedings on children and young people. They are continuing to work with CAFCASS Cymru. They provided an update on their inspections of supported contact centres, which have produced very positive findings, with over 70 per cent being awarded a four-star 'good' rating. FJYPB's 'top tips' have now been circulated via a newsletter and to the Public Law Working Group for use in their interim report.

### ***Family Justice Council (FJC)***

7. The secretary to the FJC set out the group's work with the judiciary and judicial college on Professor Kate Morris' report into the dissemination of research to the family judiciary. The group are also working on how to deal with litigants in person, informed by up-to-date research on these individuals and their needs. They are undertaking technical work on pension distribution on divorce with the pensions advisory group. Their working group on covert recordings is still ongoing, and there is a wide interest in this. The evidence so far shows that covert recordings rarely assist the court – this is usually a symptom of extreme hostility between parents. Overt recordings are preferable in private law. Best practice guidance on domestic abuse in the family courts will be circulated with a view to publication later this year, and interim guidance on Special Guardianship Orders has been produced for presentation to the President.
8. It was noted that publication of guidance on Special Guardianship Orders would be welcome as soon as possible.

### ***Performance Improvement Sub-Group (PISG)***

9. The Chair of the Performance and Improvement Sub Group (PISG) provided an update on system performance. The position remains challenging, as expected, and is similar to that reported in January, with a slight improvement in the average duration of care and supervision cases and the proportion of cases completing in 26 weeks, as well as a small reduction in care and supervision receipts. With further judicial resources available this year, the PISG

anticipate the family courts will start to address the backlog, providing that receipts remain constant.

### **ITEM 3 – Private Family Law Update**

10. This update was introduced by MoJ policy, setting out the landscape in private law, and the impact on public law, as well as the need to understand the cohort of parents coming through the system, and those who can be diverted from the system.
11. The Board agreed at the last meeting to turn its eyes to private law – this update considers five matters: (i) what the data on private law tells us; (ii) why those trends matter; (iii) what has been learnt on diverting cases from court; (iv) potential policy options to address the rise in demand; and (v) questions to be considered.
12. A combination of published statistics, unpublished Cafcass data, and PISG data have been considered. All the data shows steady and continuous growth across private law, including the total number of cases, the average time taken, and the number of outstanding cases. It is believed that returning cases account for around one third of private law cases. There is also significant local variation. As well as the rise in demand, the system is also seeing increase in complexity: section 7 requests and rule 16.4 cases are up by 24 per cent and 43 per cent respectively on the levels seen in 2016/17. Whilst Cafcass has been given additional resources to increase the number of guardians by ten per cent, their workload has increased by fifteen per cent in the last twelve months; and whilst judicial sitting days have increased in the last four years, the number dedicated to private law cases are down by twelve per cent.
13. The importance of these figures was emphasised – research shows that private law cases often concern complex and distressing issues, and that the presence of high levels of parental conflict can have emotional, behavioural, educational, and health impacts; generating an increased risk of inter-generational transmission of familial conflict. The figures are also important because longer private law proceedings have an impact on public law cases.
14. The findings of the Manchester pilot, which sought to identify cases which could be safely diverted from court, were discussed. Cafcass social workers found that approximately 80 per cent of private law cases that came to court involved some form of safeguarding issue and were therefore not suitable to be diverted from court. The remaining 20 per cent appeared to be appropriate for resolution out of court, which is in line with previous research. However, only around 20 per cent of this group took up the offer of free access to services such as mediation and negotiation. The reasons provided for doing so were varied, with the most frequent the perception that court could offer a better outcome. However, 70 per cent of those that did engage did reach an agreement, and the combination of the Separated Parents Information Programme (SPIP) with mediation appears to be particularly effective.
15. The timing of intervention is crucial – it is likely to be too late by the time people have completed a court application. Intervention must be early, and must be designed to meet the complex needs of court users. It is also vital to understand what drives the cohort's view that court is the best option for them, so that we can better educate people about their options, and combine interventions successfully. MoJ policy are using digital and behavioural insights to gather feedback on what proves effective, and are engaging with other government departments and learning from other jurisdictions.
16. Four areas of overlap with the President's Private Law Working Group were noted: pre-court pathways and diversion, remodelling the work to first hearing to identify alternate pathways for

less complicated cases, having a separate track for returning cases, and providing 'after care' to reduce risk of return.

17. Four questions were posed to the Board:

- (i) Do members recognise challenges outlined?
- (ii) Are there other areas of public policy that we could learn lessons from to help engage vulnerable groups?
- (iii) Are there any other interventions that we should explore?
- (iv) What more can each organisation do to help divert cases from court?

18. Members agreed that it is often too late by the time cases get to court. It was noted by Cafcass Cymru that funding for early interventions was not always available in Wales. It was also noted that, whilst there are many interesting models emerging, we should be cautious not to design a system that is overly complex. It was suggested that there may be merit in working to de-normalise familial conflict through a long-term public health approach to high conflict disputes.

19. It was acknowledged that the figures outlined relate to Cafcass demand and that these do not constitute the full picture of private law case demand. It was also noted that the President's Private Law Working Group can only look at what happens once an application has been made, but that public education has an important role to play earlier in the process. It is vital to manage expectations, raise awareness of other support, and change attitudes. Nicolas Ward's report 'Making Contact Work' was noted to have made very similar points.

20. Members observed that 'no-fault' divorce reform offers a useful diversionary opportunity by giving six months to signpost people to information, but it was acknowledged that many couples involved in private law disputes were not married. DWP's renewed funding to reduce parental conflict and the legal aid support pilot were recognised as having a role to play. Members noted that from a social work perspective, private law cases are often some of the most complex, time-consuming, and costly – including to public services beyond those represented at the FJB. Members concurred that wider agencies and community services should be engaged with this work, and the need to pilot work at a local level was emphasised.

21. Members recognised that significant events such as a new partner or new children can destabilise arrangements, leading to returns to court. Court decisions need to be something that the family can sustain, and may need to be able to adapt, which requires an element of continued communication within families. The role of mediation was highlighted in this context. Trigger points are being explored further. It was noted that a significant proportion of the separated family population have no contact with either the family justice or child support system: whilst many are content with this, others may be in need of support and we should work to increase our understanding of this group. It was agreed that private law reform warranted further work, and should return at a future meeting.

#### **ITEM 4 – Update on the FJB Work Programme**

22. Following the FJB's agreement of the proposals from the joint MoJ-DfE work to address demand and variation in public law at the meeting in January, MoJ Policy outlined the content and prioritisation of these proposals, and a programme to bring this forward with a focus on three areas: (i) pre-proceedings; (ii) the use of s.20/s.76 as an alternative to care proceedings; (iii) more effective sharing of best practice within the system.

23. Members were invited to comment on the programme, and the question of the role of the FJB and its members in delivering this both nationally and locally was discussed. DfE Policy emphasised the importance of local behaviour change, and the role of FJB members in helping to deliver this. The idea of 'nudging' change in the system through sharing of evidence was also discussed, as was thematic work to build horizontal links in the system.
24. The President of the Family Division noted that the Public Law Working Group report includes a wide-ranging combination of shorter recommendations and some more substantial recommendations, running across six strands of work, and with a focus on changes to practice and process as opposed to legislation. Minister Zahawi noted the success of the President's Working Groups.
25. Members discussed that it would be beneficial to consider case studies to compare good practice and to circulate this to Local Family Justice Boards (LFJBs). Minister Zahawi stressed the importance of members continuing to work together to implement the work programme and to effectuate behavioural change and continual improvement within the system. Members emphasised the need to phase implementation carefully and incrementally, and consider how to support LFJBs, and it was agreed that separate work on the detailed practical stages and implications of the work programme would be beneficial.
26. The President of the Family Division noted that the FJB national conference was a great success and served as a valuable opportunity to bring together practitioners from across the country. He also suggested a 'working meeting' of FJB members to enable a more detailed discussion of the actions, to which other members agreed.

ACTION: MoJ and DfE policy to consider setting up a working group to oversee the work programme.

## **ITEM 5 – Feedback from LFJB Sponsors**

27. This item was introduced by MoJ Policy, further to FJB's agreement at the January meeting to a set of four policy-focused questions for sponsors to raise with LFJBs during the first quarter of this year. The agreed action was to report back to the FJB to establish clear tasking for sponsors and a dialogue between the FJB and LFJBs on key issues.
28. Sponsor and Chair availability means that responses were limited. Eleven sponsors raised questions with fifteen boards, mostly through a conversation with the Chair.
29. Responses were varied with respect to questions 1 and 2, which related to links and communication between boards; and access to constructive data to improve performance within LFJB areas. Boards seemed to suggest that the former depended more on links at agency, rather than board level. Some respondents also expressed a desire for 'themes' to be supplied by the FJB to steer discussion of data. It was noted that the current work programme contains mechanisms for promoting engagement, including the pairing of LFJBs who share similar demographics; and will also address some of the concerns raised regarding data, including refreshing the data sharing factsheet, and updating the PLATO tool.
30. Almost all LFJBs felt that more direction and information from the national FJB would be beneficial to them in response to question 3, particularly in the form of regular updates. There was also significant appetite for the sharing of best practice examples, and the current work programme provides a structured plan for doing this. Question 4 indicated some interest in integration of early support services; however, it was noted that cost posed a significant barrier.

31. Members were invited to comment on the responses, a further three proposed questions for the next two quarters, and any further questions that may assist LFJBs. It was noted that the national FJB should be careful to achieve a two-way stream of engagement, communication and support, rather than seeming to over burden LFJBs. Members also noted the questions that are asked to local boards should be framed within the current work programme, and that consideration should be given to how best to introduce the questions to the local boards and how to feed back the responses most efficiently.

## **AOB**

32. The meeting closed, with the next meeting planned for the autumn. Members were thanked for their contributions.