



JUDICIAL OFFICE

Triennial Review: Civil Justice Council and Family Justice Council

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Triennial Review: Civil Justice Council and Family Justice Council

Stage One

1. Introduction

1.1 Executive Summary

The Triennial Reviews of the Civil Justice Council (CJC) and Family Justice Council (FJC) were announced in a Written Ministerial Statement to Parliament on 4 November 2013.

The CJC is an Advisory Public Body which was established under the Civil Procedure Act 1997 with responsibility for overseeing and co-ordinating the modernisation of the Civil Justice System (CJS).

The FJC's main role is to promote an inter-disciplinary approach to family justice, and to monitor how effectively the system, both as a whole and through its component parts, delivers the service the Government and the public need and to advise on reforms necessary for continuous improvement.

Following an evidence gathering exercise commencing on 4 November 2013, Stage One of the Reviews for CJC and FJC has concluded that:

- There is a continuing need for the functions of the CJC and FJC
- Neither the CJC or the FJC should not be abolished or merged into another organisation but continue as an Arm's Length Body, independent of Government
- Both the CJC and the FJC meet the three tests set by the Cabinet Office
- Both Reviews should move forward to Stage Two and consider the governance of the Councils.

1.2 Public Bodies Reform Agenda

The Public Bodies Reform Agenda is led by the Cabinet Office, using HM Treasury rules and standards. In 2010, over 900 bodies were subject to a cross-Government review undertaken by all departments. This included all Non-Departmental Public Bodies, along with a number of Non-Ministerial Departments and public corporations. As part of this Review both the CJC and the FJC were retained. The Triennial Review process was then established in 2011 to ensure that all NDPBs remaining in place following these reforms were regularly reviewed.

As sponsoring body of both the CJC and FJC, the review is being undertaken by the Judicial Office for England and Wales.

1.3 Scope and Purpose of Triennial Reviews – Stage one

The Cabinet Office has identified two principal aims for Triennial Reviews:

- to provide robust challenge to the continuing need for individual NDPBs – both their functions and their form (stage one); and

- where it is agreed that a particular body should remain as an NDPB, to review the control and governance arrangements in place to ensure that the public body is complying with recognised principles of good corporate governance (stage two).

All reviews are to be conducted in line with the following principles:

- Proportionate: not overly bureaucratic; appropriate for the size and nature of the NDPB
- Timely: completed quickly to minimise disruption and reduce uncertainty
- Challenging: robust and rigorous, evidencing the continuing need for functions and examining and evaluating a wide range of delivery options
- Inclusive: open and inclusive. Individual NDPBs must be engaged, key users and stakeholders should have the opportunity to contribute. Parliament should be informed about the commencement and conclusions
- Transparent: all reviews should be announced and reports should be published
- Value for Money: conducted to ensure value for money for the taxpayer.

1.4 Process and Methodologies

This Review has been completed in line with Cabinet Office guidance:

https://www.gov.uk/Government/uploads/system/uploads/attachment_data/file/332147/Triennial_Reviews_Guidance.pdf

Cabinet Office guidance requires that the first stage of the review should identify and examine the key functions of the NDPB. It should assess how the functions contribute to the core business of the NDPB and the sponsor department and consider whether the functions are still needed. Where the department concludes that a particular function is still needed, the review should then examine how this function might best be delivered.

When assessing how functions should be delivered, the review should examine a wide range of delivery options. This should include whether the function can be delivered by local Government or the voluntary or private sectors. It should also include an examination of different central Government delivery models, including whether the function can be delivered by the sponsoring department, by a new or existing Executive Agency or by another existing central Government body. It is Government policy that NDPBs should only be set up, and remain in existence, where the NDPB model can be clearly evidenced as the most appropriate and cost-effective model for delivering the function in question. Reviews must evidence that functions have been assessed against a wide range of delivery options.

In many cases, some delivery options can be quickly rejected. However, for each function under consideration, the review should identify all viable delivery options and undertake a fuller assessment of these options. Where appropriate, this should include a cost and benefits analysis. If one of the delivery options is the NDPB option, this must also include an assessment against the Government's 'three tests':

- Is this a technical function (which needs external expertise to deliver)?
- Is this a function which needs to be, and be seen to be, delivered with absolute political impartiality (such

as certain regulatory or funding functions)?

- Is this a function which needs to be delivered independently of Ministers to establish facts and/or figures with integrity?

Based on these fuller assessments, the department can then make an informed decision on how the function should be delivered in the future:

- Abolish
- Move out of Central Government (e.g. to voluntary or private sector)
- Bring in-house (e.g. to an existing Executive Agency)
- Merge with another body
- Delivery by a new Executive Agency
- Continued delivery by an NDPB

1.5 The Judicial Office Approach

The Judicial Office of England and Wales was established in 2006 to support the judiciary in discharging its responsibilities under the Constitutional Reform Act 2005. The Judicial Office reports to the Lord Chief Justice – its purpose is to support the judiciary in upholding the rule of law and in delivering justice impartially, speedily and efficiently. As such it operates independently of the Government.

To ensure consistency of approach to the programme of MoJ Triennial Reviews, guidance was issued for use by all the review teams to be set up for each NDPB. The guidance was based on that issued by the Cabinet Office and was developed to the particular needs of the Department.

The review has been governed by a Project Board and supported by a Critical Friends Group. The Project Board is comprised of officials from the Review Team as well as representation from both Councils. A full list of members is at Annex C.

The Critical Friends Group provides robust challenge to the review and includes representation from the MoJ's Triennial Review programme, National Archives, CAFCASS, MoJ senior policy officials responsible for CJC and FJC and a former member of the CJC. A full list of members is at Annex D.

There have been no direct costs associated with undertaking the review, other than those associated with Judicial Office staff and judicial time. Staff working on the review were able to absorb this work along side their usual tasks.

1.6 Civil Justice Council Call for Evidence

The call for evidence on the Triennial Review was issued on 4 November 2013, lasting until 25 November 2013. This was published as a public consultation open to all respondents, via the Judicial Office and MoJ websites. Relevant stakeholders and members of both Councils were invited to submit evidence and the review was publicised to interested parties by way of a press notice sent to legal publications

A written ministerial statement was made in both Houses of Parliament confirming the start of the call for evidence and the process being used in the review.

The call for evidence received 20 responses. The call for evidence and a list of respondents are included at annex B at the end of this report.

1.7 Family Justice Council Call for Evidence

The call for evidence on the Triennial Review was issued on 4 November 2013, lasting until 25 November 2013. This was published as a public consultation open to all respondents, via the Judicial Office and MoJ websites. Relevant stakeholders and members of both Councils were invited to submit evidence and the review was publicised to interested parties by way of a press notice sent to legal publications

A written ministerial statement was made in both Houses of Parliament confirming the start of the call for evidence and the process being used in the review.

The call for evidence received 17 responses. The call for evidence and a list of respondents are included at annex B at the end of this report.

2. Background

2.1 Functions of the Civil Justice Council

The CJC is an Advisory Public Body which was established under the Civil Procedure Act 1997 with responsibility for overseeing and co-ordinating the modernisation of the CJS. It promotes the needs of civil justice in England and Wales and monitors the system to ensure that progress to modernise it continues. It provides advice to the Lord Chancellor, the Judiciary and Civil Procedure Rule Committee on the effectiveness of aspects of the CJS, and makes recommendations to test, review or conduct research into specific areas.

The CJC has a statutory duty under the Civil Procedure Act 1997 to:

- keep the CJS under review
- consider how to make the CJS more accessible, fair and efficient
- advise the Lord Chancellor and the Judiciary on the development of the CJS
- refer proposals for change in the CJS to the Lord Chancellor and the Civil Procedure Committee and
- make proposals for research.

The CJC is separate to the Civil Procedure Rule Committee (CPRC) but both are under a statutory duty to ensure that the CJS is 'more accessible, fair and efficient'. The former was created by the Civil Procedure Act 1997 in order to implement recommendations made by Lord Woolf in his Access to Justice Reports, that a body should be created to keep the operation of the justice system under review and to make recommendations for its reform.

The latter is the statutory successor of the Supreme Court and County Court Rules Committees, both of which existed in one form or another from the 19th Century. Its role is entirely distinct from that of the CJC; it is a technical role that focuses on the drafting of procedural rules.

The CJC, in line with its statutory role, scrutinises the actual operation of the CJS, and makes recommendations for its improvement. It has a policy and strategic role - helping to develop and advise on possible reforms, highlighting problems and issues in the delivery of civil justice, and providing a channel of communication for practitioners, court users and the judiciary to provide advice to Government and others.

The role of the CPRC, by contrast, is focused on making rules and drafting practice directions to govern the operation of the courts, to ensure that rules reflect changes in legislation and practice (e.g. changes to accommodate technological improvements). The Rule Committee's focus is largely on implementation and giving technical effect to legislative and policy reforms. It does not have a policy-making or development role. The CJC will typically have been involved at an earlier stage of the process.

In order to reflect the markedly different roles played by the two bodies their membership is drawn from different interest groups, and reflects different skills.

Qualification for membership of one body does not in and of itself demonstrate that an individual would either have the skills or experience to justify membership of the other.

2.1.1 Form of the Civil Justice Council

The CJC is chaired by the Master of the Rolls and comprised of 18 members from a wide range of representatives including the judiciary, legal professions, Government, academia and business. The Council is supported by a small secretariat. The Executive Committee is made up of seven members.

The CJC is funded as part of the Judicial Office. Its budget for the financial year 2013/2014 is £40k excluding the staff costs of a Secretariat of 2.3 (Full Time Equivalent) members of Judicial Office Staff. The budget for the CJC is fixed to year-end outturn taking into consideration any future financial demands the CJC may meet. The Council meets four times per year. Members of the Council are unpaid volunteers and give their time freely to take part in meetings and to give advice. They undertake a great deal of work on behalf of the CJC.

The costs of the CJC have reduced significantly in recent years. The 2013/14 budget of £40k is over one third less than the 2011/12 budget of £68k. This latter figure reflected heightened activity on the Jackson reforms to civil litigation.

2.2 Functions of the Family Justice Council

The primary role of the FJC is to promote an inter-disciplinary approach to family justice and to monitor the system and so promote better and quicker outcomes for the families and children who use the family justice system.

The Council, a non-statutory, advisory non-departmental public body, monitors how effectively the system, both as a whole, and through its component parts, delivers the service the Government and the public need. It advises on reforms necessary for continuous improvement.

The Council was established following a consultation published in March 2002 by the then Lord Chancellor's Department. The establishment of the Council was approved by the Lord Chancellor in May 2003 and it became operational in July 2004. Since the final report of the Family Justice Review panel in November 2011, the Council has responded to the recommendations by changing its structure and way of working. Its secretariat has become part of the Private Office of the President of the Family Division, reflecting the Council's enhanced role of providing expert inter-disciplinary advice direct to the Family Justice Board, and providing guidance documents and input to the implementation plan for the Single Family Court and judicial proposals for the modernisation of family justice.

The FJC provides independent expert advice, from an inter-disciplinary perspective, on the operation and improvement of the family justice system. Its principal focus is on identifying best practice and the need for, and providing, guidance to the legal, medical and social care professionals working in the family justice system. The Council is also a forum for consultation, and engagement with key stakeholders and professions working in the family justice system. The Family Procedure Rules Committee is responsible for making the procedural rules of court used in family cases. This is a technical function which provides the bare bones of the court process; the work of the FJC seeks to put flesh on those bones by providing inter-disciplinary guidance on the most effective approaches to public and private law cases.

The Family Justice Board is an executive and strategic body made up of the chief executives, and others in senior leadership positions, of the key agencies working in the family justice system e.g. Cafcass, HMCTS and the local authorities. The senior judiciary have observer status on the Board. The Board has been the co-coordinating body for the reforms in public law proceedings designed to reduce case duration to a maximum of 26 weeks in the great majority of cases. It is the forum used to discuss performance across the whole system. The local Family Justice Boards report to the national Family Justice Board on performance and are responsible for delivering inter-disciplinary training in their local areas.

The Council, the Rules Committee, the Board and the local Boards are, therefore, bodies which have distinct functions and roles. However, the relationship between the FJC and the Family Justice Board is an issue that will be looked at in Stage Two of the Review. It seems clear that there is scope for making better use of the inter-disciplinary expertise that the Council offers and for more effective co-ordination of effort and activity

The FJC operates independently of the Family Justice Board but as a critical friend to the Family Justice Board, provides it with expert advice, from an inter-disciplinary perspective, on the operation and reform of the family justice system in England and Wales.

Its objectives are, in alignment with the priorities established by the Family Justice Board, to:

- i. provide independent expert advice, from an inter-disciplinary perspective, to the judiciary, the Family Justice Board and Government on key family justice system issues referred to it either by the Judiciary or by the Family Justice Board
- ii. highlight key cross-system issues for the Family Justice Board to consider

- iii. fulfil a 'critical friend' role in advising how the Family Justice Board can deliver its priorities and implement its action plan for system-wide improvement
- iv. support the Family Justice Board in devising and disseminating best practice guidance
- v. keep informed of current research and advise the Board and Government on research to be commissioned
- vi. work with the Family Justice Board and Government researchers to inform judges, lawyers, social workers and other professionals of the findings of the latest socio-legal and medico-legal research
- vii. make recommendations to the President of the Family Division on the need for new, or revised, Practice Directions and guidance for use in family proceedings; and
- viii. advise the Family Justice Board on appropriate training and guidance for use by professionals and Local Family Justice Boards.

2.2.1 Form of the Family Justice Council

The FJC is made up of 25 members. In order to achieve its purpose effectively, the Council consists of a representative cross-section of those who work, use or have an interest in the family justice system.

The Council meets four times a year and the majority of its work is undertaken by its working groups. The membership for all working groups is drawn from the Council and its network of expert resources and professionals. Each working group is chaired by a member of the Council. The management of the Council is undertaken by its Executive Committee.

The FJC is funded as part of the Judicial Office. Its budget for the financial year 2013/2014 was £16k excluding the staff costs of a Secretariat of 2.7 (Full Time Equivalent) members of Judicial Office Staff. Members of the Council are unpaid volunteers and give their time freely to take part in meetings and to give advice.

The costs of the FJC have reduced significantly in recent years. The 2013/14 budget of £16k represents more than a 75% reduction on the 2011/12 budget of £95k. This reflects that the costs of the projects that the FJC have delivered in recent years have varied significantly.

In 2012, the budget for the Local Family Justice Boards, the Annual Local Family Justice Boards Conference and Secretariat of 1.0 (Full Time Equivalent) were transferred to the Family Justice Board. In 2013 the budget for Research Costs were transferred to the Family Justice Board.

3. Response and Findings

3.1 Civil Justice Council Responses and Findings

A number of members and non-members of the Civil Justice Council responded to the review and there was near unanimity on the need for the Civil Justice Council to continue its functions and remain, as it is, independent of Government.

Q1: Is there a continuing need for the functions of the Civil Justice Council?

All those who responded to this question agreed strongly that there was a continuing need for the functions of the Civil Justice Council. It was noted that the functions are particularly needed at the current time when there is such a significant amount of change and reform within the CJS. Litigants in person putting pressure on the system were one example given and the need for the CJS to be more accessible.

“The fact that the work of the CJC has been extensive and that it has played a crucial role in reviewing the civil justice process, and continues to do so, with very limited resources is highly commendable.”

The Law Society

“What is currently being done by the Civil Justice Council through its executive and sub-committees is of great value.”

UNISON

“Keeping the CJS under review is an important function at all times, but particularly at a time of considerable reform which has yet to bed in. The CJC has contributed significantly to the implementation process of the Jackson reforms as well to other Government-led reforms.”

Respondent

Q2a: Should the CJC be abolished?

None of the respondents thought that the CJC should be abolished since there was a strong requirement for the work it does. If the CJC were to be abolished there would still be a need for the functions it fulfils and it would have to be reconvened in one form or another. The CJC has developed a reputation for being a highly authoritative and respected body and if it was abolished, any replacement would need time to establish the same level of credibility.

"The CJC should not be abolished. It is a well established body which is respected by stakeholders. It is fit for purpose. Its structure is such that it can deliver advice in a bipartisan way."

TUC

"We believe that the role played by the CJC is vital for the good administration of justice, and that any change to its form or functions is unnecessary."

Association of Personal Injury Lawyers

Q2b: Should it be moved into the Ministry of Justice?

It was the view of all those who responded that the CJC retain its independence and neither it nor its functions should be moved into the Ministry of Justice. For the Council to effectively fulfil its role effectively it is necessary for it to be independent of Government. The Council acts as a 'critical friend' to the MoJ giving honest and transparent advice and feedback on Government policy which would be compromised if it were to be moved into the MoJ.

While no one thought the MoJ should take over the CJC a question was raised as to whether there could be closer working between the two. In particular it was suggested that relevant members of CJC working parties should be involved in the drafting of legislation. Whether this would be desirable or practical is outside the scope of this stage of the review but is included should either the MoJ or CJC wish to consider it further.

"Subsuming the functions of the CJC within the MoJ would risk losing a valuable degree of independence, both operationally and with regard to views on matters of policy."

Solicitor

"Their objectivity requires absolute political impartiality and their functions need to be delivered independently."

Bar Council

"It is important to retain the CJC's independence, and the appearance of independence, as the leading civil justice think tank and watchdog in England and Wales."

Medical Defence Union

Q2c: Could the functions be delivered by the voluntary sector or by the private sector?

It is difficult to see what advantage either of these options would bring. The CJC currently comprises members of both the private and voluntary sector. They all give their time and expertise free of charge so, in a sense, the Council is already working as a voluntary body. If the CJC was moved into the private or commercial sector those who took part would be less likely to devote their time voluntarily leading both to a lessening of the expertise on the Council and increased costs for remunerating the members.

There would also be the perceived or actual conflict of interest if a commercial organisation who had an interest in influencing the shape of the CJS took over the running of its functions. Even without this conflict it is not clear how the voluntary or private sector could deliver the functions any more efficiently or effectively than at the present.

“Members of the Council are volunteers in any event, so there would be limited cost saving if a voluntary sector organisation took on the role. I assume that, if the service was delivered by the private sector, this would increase overall costs and reduce the impartiality of the Council.”

Respondent

“It is hard to see how either the voluntary or private sector could secure the range of expertise upon which the CJC calls.”

Respondent

Q2d: Could it be merged with another existing body?

It is not clear which other body the Civil Justice Council might be merged with. The only possible contender would be the Family Justice Council but there was concern that given the very different agendas, nature and workload of the two Councils their effectiveness would be diluted if this were to happen.

“A merger with the Family Justice Council would likewise be detrimental to the functions of each: although there is both an overlap and an interface between civil justice and family justice, they have a different focus and require their own specific expertise.”

Lord Justice Richards

Q2e: Could the function be delivered by a new Executive Agency?

It is not clear what benefits there would be by transferring the functions into new Agency and it was felt there were disadvantages. There is the risk that an Executive Agency would essentially be under Ministerial oversight

and this independence would be compromised in the same way as it would be if the functions were transferred to the MoJ.

"An Executive Agency is part of a Government department which is set up to carry out certain executive functions of the Government. Any recommendations of that body would not be seen to be impartial."

The Law Society

"If the CJC were transferred to an Executive Agency, we cannot see any benefits but assume that this move would incur additional costs".

Association of Personal Injury Lawyers

Q2f: Should it remain as an Arm's length Body?

All those who responded to this question agreed that the CJC should remain as an ALB. The existing model was felt to provide expertise, value for money and quality of advice that could not be delivered by any of the alternative models.

"The CJC should be retained in broadly its current format."

Respondent

Q2g: If it should remain an Arm's Length Body, does the existing model meet the 'three tests':

The CJC meets all three tests. The functions it provides are of a technical nature and the depth and range of advice that it gives requires technical expertise of its members. Its members come from a range of disciplines within the CJS and give impartial and honest advice, that is independent of Ministers and so seen as objective. This is a necessary requirement for the CJC whose main aim is to ensure the effective running of the CJS.

Q3: Other comments

There were a range of other comments that were reflected in responses to the review regarding value for money, quality of the members and bias of the Council;

Q3a: Value for Money

The Civil Justice Council is almost unique among Arm's Length Bodies in that its members undertake much of the work of the Council voluntarily and are supported by a very small secretariat, with the Head of Secretariat carrying

this function in addition to his other duties as Private Secretary to the Master of the Rolls. This makes the CJC extremely cost effective and given the quality of the advice they provide to Government and others and volume of the work they undertake, very good value for money.

"The CJC is able to carry out important reviews on a shoe-string budget, with a minimum infrastructure.

"It is noteworthy that the administration costs of the CJC were reduced to what was considered the bare minimum at the last triennial review"

Association of Personal Injury Lawyers

"They offer outstanding value for money: in return for a modest budget and a very able secretariat, the public purse gains all of the above, including major donations of expert and professional time, without cost."

Respondent

"The CJC is fit for purpose, and also as a body represents good value for money."

UNISON

Q3b: Quality of members

The wide range and high quality of expertise that members brought to the Council was noted as being particularly important. It was suggested that attracting such a range of high quality people could only be done as they contribute their time on a voluntary basis. It was suggested in order to retain expertise and experience on the Council that those sitting should have the option of having their term of membership extended to a second period of service.

Q3c: Bias

One (anonymous) respondent highlighted the lack of women and ethnic minorities on the CJC and its committees. It was also suggested that the make up of the Council is claimant biased. The issue of diversity and the governance of diversity procedures when recruiting to the CJC is something that the review would consider should it commence to Stage Two.

3.1.1 Views of the Chair of the CJC, Lord Dyson, Master of the Rolls

Members of the review team interviewed Lord Dyson to seek his views. He also submitted his views in writing in a letter to the Parliamentary Under-Secretary of State at the Ministry of Justice. The Lord Chief Justice subsequently wrote to the Under-Secretary of State saying that he “wholeheartedly supported Lord Dyson’s submission” and that he “wished to adopt each of his responses to the specific questions”.

i) Function of the CJC

Lord Dyson was of the firm view that there was a clear role for the Civil Justice Council in keeping the CJS under review and that the functions of the CJC are ‘highly relevant’ and ‘essential’.

ii) Abolition

Lord Dyson did not agree with the abolition of the CJC. The consequences of doing so would be to render the CJS inflexible and leave the Government without any credible body to consult when making changes to the CJS.

iii) Move into MOJ

Lord Dyson did not agree with the proposal to move the CJC into the MoJ. He felt that it was important for the CJC to remain independent of Government and also that it would be unable to attract the same quality of experts if it became a Government body.

iv) Move to Private or Voluntary Sector

Lord Dyson did not feel the function of the CJC could be delivered by the private sector. The CJC does not generate income, and any business ownership would compromise its ability to provide independent comment and oversight. The CJC already relies heavily on the voluntary input from its expert members.

v) Merge with another organisation

Lord Dyson could not think of any body the CJC could be merged with. Even if there were one (such as the Family Justice Council) any merger would dilute the work that the CJC carries out.

vi) Delivery by a new Executive Agency

Lord Dyson could not see any advantage in an Executive Agency delivering the function of the CJC. He felt it would be little different to direct Government control with the resulting lack of independence.

vii) Continue as a NDPB

Lord Dyson agreed that the CJC should continue as a NDPB as the existing model has served the CJC well.

viii) Meets the three tests

Lord Dyson agreed that the ‘three tests’ are met by the CJC. The CJC needs to remain independent and impartial in order to fulfil its functions properly.

“The CJC provides a vital function, and it is important that it continues to work to improve and independently review the CJS.”

Lord Dyson, Master of the Rolls.

Lord Dyson commented that if the delivery of the CJC functions were done in any other way, it would still require the input from the panel of experts that currently sit on the CJC. He also commented that in recent years the CJC has undergone a similar review to this one and has dramatically reduced its budget and staffing while still undertaking and delivering on major projects.

3.2 Family Justice Council Responses and Findings

A number of members and non-members of the FJC responded to the review and it was clear from all responses there to continuing need for the FJC to retain its functions and to deliver them independently.

Q1: Is there is a continuing need for the functions of the Family Justice Council?

All those who responded agreed that there was very much a need for the functions of the FJC. There is no other mechanism whereby expert advice from a range of interdisciplinary perspectives can be delivered. Many who responded felt that this was essential to providing proper advice and influencing policy on the working of the Family Justice System (FJS). This was especially true as the FJS is undergoing a period of change and reform following the Family Justice Review.

“The need for independent, expert advice from an interdisciplinary perspective on the operation of the family justice system has arguably never been so great.”

Respondent

Q2a: Should the FJC be abolished?

The FJC should not be abolished and there was concern if it was not only would it be detrimental to the FJS but there was a real risk of harm to children. If the FJC was abolished it would be necessary to re-create another body that fulfils the same functions with the same diverse group of representatives. The FJC provides vital support and advice to the Family Justice Board as well as to Local Family Justice Boards. The work of the FJC allows the Local Family Justice Boards to fulfil their roles on limited budgets.

“If the FJC were to be abolished there would be a significant loss for the children who form an integral part at the centre of the family justice system.”

Respondent

“There is a genuine risk that, were the FJC to be dissolved, the current level of inter-agency, multidisciplinary engagement would diminish with the result that children may be put at risk and that remedial work with families would not occur. The Bar Council sees the role of the FJC as developing over the forthcoming years rather than diminishing.”

Bar Council

Q2b: Should it be moved into the Ministry of Justice?

The FJC should not be moved into the Ministry of Justice. It is broadly the view of those who responded that it was vital that the Council remained independent of the Government in order for it to continue to provide honest and impartial advice. Moving it into the MoJ would not remove the need for a range of organisations and individuals to

be consulted for advice. Due to the constitutional principle of separation of powers and the independence of the judiciary, if these functions were moved into a Government department it would mean there could be no judicial input. This would be a great loss to the effectiveness of the Council.

“It would not be constitutionally appropriate for a Government department to act as an advisory body, since such a role would be incompatible with the department’s responsibilities to its ministers and the wider Government.”

CAFCASS

Q2c: Could the functions be delivered by the voluntary sector or by the private sector?

The work of the Council would be unlikely to command the same respect if it were moved into either the voluntary or private sector. Like the CJC those sitting on the FJC come from a mix of private, public and voluntary sector backgrounds and each give up their time free of charge. In that sense it is already a voluntary body. Moving it into the private sector would increase costs as any experts giving advice would expect to be paid and it may remove the sense of public spiritedness of those currently sitting on the FJC.

Q2d: Could it be merged with another existing body?

The only conceivable body that the FJC might be merged with is the CJC but given the difference in their range of work and specialism it would not be advisable to merge them.

“There is no other body with which it could merge. The CJC, which might seem at first to be a suitable body, deals with a very different jurisdiction, in which the law, practice and procedure hardly resembles that of the Family Court.”

Family Law Bar Association

Q2e: Could the function be delivered by a new Executive Agency?

It would not be appropriate to move the functions of the FJC into an Executive Agency as it is an advisory body. It would also create the same issues as moving them into the MoJ so would not be advisable: for example it would risk compromising its independence. It would also be likely to increase the costs of providing the functions.

Q2f: Should it remain as an Arm’s Length Body?

The majority of respondents agreed that the FJC should remain as an Arm’s Length Body to maintain its independence and integrity. One respondent, however commented that the FJC needed to be less remote and could communicate more effectively with its stakeholders, in particular magistrates.

Q2g: If it should remain an Arm's Length Body, does the existing model meet the 'three tests'?

The FJC meets all three tests. The Family Justice System is highly specialised and the FJC is able to engage with a wide range of experts within the system. To maintain judicial involvement and to continue to give, and be seen to give, impartial advice it is vital that it remain independent Ministers.

Q3: Other comments

There were a range of other comments that were reflected in responses to the review regarding the administration of the FJC.

All FJC members give their time free of charge and the body is run by a small secretariat. This makes the Council exceptionally good value for money for the work it does. One respondent questioned whether the secretariat was adequately resourced for the work it needs to do given the range of functions the Council is required to do and the diverse nature of its membership.

It was noted that the FJC has already undergone a significant amount of change and by aligning its terms of reference with the Family Justice Board it is able to prioritise the need for family justice reform and enhance performance. One respondent felt however that while this streamlining may have helped focus the priorities of the Council, it has led to a loss of goodwill amongst many family justice professionals.

3.2.1 Views of the Chair of the FJC, Sir James Munby, President of the Family Division (PFD)

Members of the review team also interviewed Sir James Munby to seek his views.

Q1: Purpose

Please state whether or not there is a continuing need for the functions of the Civil/Family Justice Council as defined in the Terms of Reference.

The PFD agreed that the Terms of Reference cover the functions of the FJC and that there is a continuing need for these functions. The PFD's views are that there is definitely a need for the FJC.

The functions are needed not just to inform the Family Justice Board, but Government also needed to understand the impact of policy on the Family Justice System and to look at its effect

Q2: Delivery

How should the CJC/FJC functions be delivered? Please consider the potential risks, costs and benefits of each.

a. Should it be abolished?

No, the FJC exists to bring together people and players together. It is unclear who would fulfil these functions if the FJC did not do it.

The PFD queried who would undertake the work of the FJC if it were abolished. As there is a need for the functions of the FJC either the PFD would have to spend a disproportionate amount of time consulting individuals and attending bilateral meetings to seek views, or a similar body would need to be constituted to give advice.

The PFD remarked that prior to the setting up of the FJC there were a number of ad hoc bodies that were rationalised into the FJC. The idea of an FJC as an independent expert body is still a sound one, it is not just a 'talking shop' – it undertakes a full debate and decisions and recommendations are made.

b. Should it be moved into the Ministry of Justice?

The FJC pulls together a wide range of individuals with valuable experience. It is very unlikely these individuals would be prepared to co-operate in the same way if they were absorbed into the MoJ, nor would the FJC have the credibility it currently has if it were run by the MoJ.

The PFD stressed that it was important for the FJC to maintain its independence and that impartiality was important. Any move to the MoJ would not remove the need to consult professionals for advice. The members of the FJC are unpaid, professional volunteers who are committed and dedicated to the work they do improving the FJC. Any move of the current function of the FJC would create another layer of administration and in any event it would be likely that current members of the FJC would need to be consulted in one form or another anyway. Any move of the existing FJC in its current format would simply be moving responsibility.

c. Could it be delivered by the voluntary sector or by the private sector?

As above - the PFD did not feel that it would be appropriate for the functions of the FJC to be delivered by a private sector body – its independence would be threatened. Any delivery by the private sector would inevitably require members being paid which would ultimately increase costs and reduce the value for money of the Council.

As the body is made up of unpaid individuals who give up their time to sit on the Council it is essentially a voluntary organisation already.

If a decision was made to move responsibility then any new body would still be dependent on the advice and support of a body of experts such as the current FJC, so there is no benefit in moving it.

d. Could it be merged with another existing body?

No. The PFD did not feel that the FJC could be merged with another body. Any merger with another body would weaken the work that it does.

e. Could the function be delivered by a new Executive Agency?

No. See above regarding reducing value for money.

f. If it should remain an Arms Length Body, does the existing model meet the 'three tests' above.

Yes

Q3. Other Comments:**Do you have any further comment on the functions or form of the FJC/CJC?**

The functions of the FJC are best delivered in its current format, by involving the current individuals who make up the FJC. The PFD thought that the consequences of changing its current format would be a waste of time – a waste in having to deal with lots of other bodies rather than, in its current form, one – the FJC.

The PFD added that changes have been made to the format of the FJC. It previously included a number of ad hoc bodies which overlapped with some being set by the President and some by other bodies. The current model deals with one body by the voluntary input of people across a wide range of professionals giving a balance of views and interests, all independent - all who give up their time free of charge which in itself offers great value for money.

Triennial Review: Civil Justice Council and Family Justice Council

Stage Two

October 2014

4. Compliance with Principles of Good Governance

4.3 Overview

Both Councils are slightly different compared with other public bodies that are subject to the Triennial Review process. These differences are reflected in this report.

Firstly, the governance arrangements for both Councils are broadly covered by the same arrangements as the Judicial Office. The Judicial Office and the judiciary are independent of Government. While they are both separate entities, for practical purposes they sit within the Judicial Office Governance Framework (Annex F)

The composition of each Council is also different from other public bodies: the chairs of both Councils are not appointed in the usual sense but are ex-officio appointments. The Master of the Rolls and the President of the Family Division chair the respective Councils.

Members of each Council are not appointed to and do not work for the Councils full time. They are appointed to each Council based on their specialist experience and knowledge and provide this free of charge in their spare time and in addition to their full-time positions.

A more detailed account of governance arrangements for both Councils is in Annex E.

4.2 Accountability

Oversight by both Councils is done as part of the wider Judicial Office framework and Ministry of Justice officials are represented at all Council meetings. Both Chairs are ex-officio appointments and both the Master of the Rolls and President of the Family Division meet with the relevant ministers in the Ministry of Justice regularly

There is inconsistency between how the Councils publish their annual reports. The CJC reports are available on their website whereas the FJC reports, although completed, are not.

Recommendation 1: Both the CJC and FJC to publish annual reports in a timely manner on their websites.

4.3 Role of Sponsoring Department

In the context of the CJC and FJC, the sponsoring department is the Judicial Office rather than the Ministry of Justice. The JO has regular Senior Management meetings in addition to regular meetings of the senior judiciary (including chairs of both Councils) at the Judicial Executive Board. Any issues with the Councils would be discussed at either or both of those meetings.

The Judicial Office is a small organisation and is not resourced to provide a dedicated sponsor team for both Councils, however the secretariats for both Councils are Judicial Office staff and report to the Deputy Director of the Judicial Office. In addition there is regular contact between both Councils and the relevant policy officials within the Ministry of Justice.

The terms of reference for each body are clearly set out on their websites. The CJC terms of reference are not reviewed as they are set down in legislation.

4.4 Role of Board members

Members to both Councils are appointed in line with the Code of Practice issued by the Commissioner for Public Appointments. They are drawn from wide range of individuals with different knowledge, experience and expertise.

Members of both Councils give their time and expertise freely and for no cost or remuneration. The only costs are any relevant expenses and claiming of those is governed in line with Judicial Office and Ministry of Justice procedures.

Both Councils assess their members in slightly different ways. The CJC secretariat undertakes an assessment of each member and the FJC members undertake self assessment. The Deputy Chair of the FJC also assesses the contributions and attendance of each member. It is important due to the nature of both Councils to ensure that any form of appraisal is not overly bureaucratic and is of genuine use in terms of supporting the work of the Councils.

Recommendation 2: Both Councils to consider a more formal and consistent appraisal of board members. While undertaking the process of this review the CJC has now introduced a more formal and consistent appraisal system.

4.5 Role of the Chair

The Chairs of both Councils are ex officio appointments and are held by virtue of holding the position of the Master of the Rolls (CJC) and President of the Family Division (FJC). Both these appointments are made in line with a statutory and independent process for appointing Heads of Divisions. Both chairs are independent judicial office holders and discharge their duties as such.

4.6 Communication and engagement

Both Councils work in an open and transparent manner, engaging with stakeholders and the wider public where appropriate. Any Freedom of Information requests are dealt with in line with the existing legislation under the Judicial Office Framework. Both Councils hold public meetings and consultation. Minutes of meetings, while taken are not published in a consistent and timely manner. A variety of consultation responses, publications and updates on activities are regularly published online for both bodies.

Recommendation 3: Both Councils to publish minutes of meetings as soon as they are available, on their websites.

4.7 Conduct and propriety

All members are expected to abide by the Seven Principles of Public Life set out by the Committee on Standards in Public Life. These are set out by the CJC in their letter of appointment to members and by the FJC in their Code of Practice for members, which are in the FJC Members' Handbook.

Both Councils keep a register of members' interests but only the CJC currently make these publicly available.

Rules regarding political activity are set out in the CJC's letter of appointment to members and the FJC's Code of Practice. In addition, the judicial code of conduct which applies to judicial members of both Councils states "...the principle is that a judge must forego any kind of political activity and on appointment sever all ties with political parties".

Recommendation 4: FJC to publish register of members' interest

Recommendation 5: FJC to consider publishing Members' Handbook on their website.

5. Additional Considerations from the Cabinet Office

5.1 Increasing diversity in the Civil Justice Council

The CJC are aware that the Council is not as diverse in its membership as is the FJC. One of the problems faced is the fact that the diversity of the pool of potential candidates who are suitable to join the CJC is limited. The CJC secretariat agree that further steps to increase and encourage a diverse range of candidates for membership of the Council are needed and will be raising this issue for consideration at the next Council meeting, as one of the issues that the Triennial Review has highlighted requires attention.

Recommendation 6: CJC to draw up diversity plan for recruitment of board members and to make the plan publicly available

5.2 Merging Councils into respective rules committees

In Stage One of the review we asked consultees whether or not the FJC and CJC could be merged into their respective rules committees. The responses we received were that this was inadvisable and we concluded;

“...a merger does not appear to present any real administrative or substantive benefits. It does however present a risk of increased inefficiency and a reduction in the quality of work that both bodies currently produce.”

On giving approval to commence Stage Two of the review, the Cabinet Office asked that we give further detailed consideration to the recommendation and that if found that they should remain separate from the Rules Committees then consideration should be given to merging both Rules Committees into a single body. It is not clear if this would require primary legislation to do, with both the CJC and Civil Procedure Rule Committee being statutory bodies, and not included in the schedules to the Public Bodies Act 2011.

Having considered this and for the reasons given below we strongly recommend against such a merger of Councils. In all likelihood it would increase bureaucracy, be a disincentive for Council members to give their time and expertise freely and would attract the opposition or at least strong scepticism of the senior judiciary.

As mentioned in the Stage One Review, the Councils and Rules Committees call for very different expertise. The former, as their focus is on policy development and on scrutiny of the civil and family justice systems in practice, require the membership of individuals with a distinct policy-making focus. The latter, as technical rule-drafting bodies, requires entirely different skills. Members of the two bodies, apart from the Chairman and deputy

Chairman who are common to both bodies in order to ensure a proper degree of consistency and a single point of leadership on behalf of the judiciary, are appointed on the basis of their ability to contribute positively to their respective body's field of expertise.

By way of example, on a major reform process such as the Jackson costs reforms, the Civil Justice Council looked at the pre-legislative technical implementation of the measures; and the Rule Committee drafted and agreed consequent rules and practice direction to give procedural effect to the policy and legislation. The one was not qualified to effectively carry out the other.

This point was recently highlighted by the Master of the Rolls' decision to transfer responsibility for drafting the CPR Pre-Action Protocols from the CJC to the CPRC. The former had had responsibility for originally devising and preparing them, i.e., policy-development. It had however, for historic reasons, not transferred responsibility for drafting and revising them – technical rule-preparation work – to the CPRC. Lord Dyson, the MR, effected that transfer of responsibility in 2013 in order to ensure that the right body with the right experience and skills was responsible for them in future.

Given the difference in role which each body has, and the different skills and experience their members must demonstrate, if they were to be merged any new body would necessarily have to maintain two separate sub-committees, a rule-drafting sub-committee and a policy review and scrutiny sub-committee. These sub-committees would necessarily have to have distinct memberships. This in turn would require a merged body to, in effect, replicate the size and membership of the two bodies. In order to ensure the new membership was not unwieldy an overarching Executive Committee would then need to be established to co-ordinate the two sub-committees and to sign-off their work on behalf of the new body. In essence, an unwieldy and more bureaucratic, less efficient and economical body would have to be created. Given this it is not clear that the new body would be able to attract the involvement of judges, lawyers and other professionals on whose enthusiasm, energy and expertise both bodies currently depend and from whom it derives its strength and ability to carry out its functions as effectively as both the CPRC and CJC do presently.

Secretaries for CJC and FJC are part time and do the role as well as their full time roles (as private secretaries to MR and PFD) allow. For example, the CJC is served by a part-time Secretary whose primary role is as Private Secretary to the Master of the Rolls, a dedicated Assistant Secretary and one administrative officer, and CPRC (a Secretary based within the Ministry of Justice, with further administrative support provided by the Private Secretary to the deputy Head of Civil Justice, plus lawyer support from two MoJ lawyers). In order to operate effectively a single body would require greater resources than are either available to the two bodies at present, or are likely to be available to a merged body. It is thus unlikely that a merged body would be able to operate effectively, or at the least as effectively as the two separate bodies do at present.

It is not clear that a merged model is capable of working as effectively as the present arrangements, nor is it clear that it could operate effectively within the present budgetary arrangements. In the premises, merger does not appear to present any prospect of real administrative or substantive benefits. It does however present a real risk of increased inefficiency and a reduction in the quality of work that both bodies currently produce. A merged body would have to be very large and require two sub-committees because it would not be possible to find members who have equal expertise in the family and civil rules.

Consideration as to whether the Civil and Family Procedure Rules Committee should be merged into a single body would be a matter for the Ministry of Justice to consider as the secretariats for both committees sit within MoJ. As such this consideration would be outside the scope of this review, however initial investigation indicated that there would be little benefit to such a merger and may lead to similar difficulties along the same lines of merging the FJC and CJC. The judiciary would also have serious concerns about any proposals to merge the two bodies.

In addition they would also have concerns about any attempt to merge the secretariats. Both bodies require

a dedicated secretary in order to provide them with the support that they need. It is currently enough of a challenge to find staff of the requisite quality to support each committee and expecting one person to cover both committees would lead to secretariat support suffering unacceptably as a result.

Recommendation 7: That neither Council, nor their secretariats are merged with their respective Procedure Rules Committee and that they continue to function separately in their current form.

6. Recommendations

Reference to item in Annex E in brackets. It is important, due to the size and nature of both Councils to ensure that in implementing these recommendations any processes should not be overly bureaucratic and are of genuine use in terms of supporting the work of the Councils.

Recommendation 1 (1.5): Both the CJC and FJC to publish annual reports in a timely manner on their websites.

Recommendation 2 (1.3 & 2.5): Both Councils to consider a more formal and consistent assessment of board members.

Recommendation 3 (5.3): Both Councils to publish minutes of meetings as soon as they are available, on their websites.

Recommendation 4 (3.2 & 6.2): FJC to publish register of members' interest.

Recommendation 5 (3.4): FJC to consider publishing Members' Handbook on their website.

Recommendation 6 (3.3): CJC to draw up diversity plan for recruitment of board members and to make the plan publicly available.

Recommendation 7: That neither Council, nor their secretariats are merged with their respective Procedure Rules Committee and that they continue to function separately in their current form.

In respect of the recommendations, the CJC has already commenced implementing these. The recommendations relating to the FJC await the appointment of a Secretary to the Committee.

Annex A: Civil Justice Council and Family Justice Council Call for evidence

Triennial Review of the Civil Justice Council and Family Justice Council

Overview

The Government's response to the Public Administration Select Committee report 'Smaller Government: Shrinking the Quango state' sets out the plans for reforming public bodies. It includes new Triennial Review requirements for Non-Departmental Public Bodies (NDPB).

Triennial Reviews are expected to take between three to six months and are carried out by the Sponsor Department of the respective bodies. The Judicial Office is carrying out the review of the Civil and Family Justice Councils.

Call for Evidence

In order to review the continuing need for the functions and the form of the CJC & FJC and its statutory powers to perform these functions, the review team is seeking evidence from a wide range of bodies in response to the two principal aims stated by Cabinet Office (as detailed below).

The review would particularly welcome hearing from users of both Councils.

While the review is primarily aimed at those with some knowledge or experience of the work of the Councils, anyone may choose to use it as the basis for submitting their evidence.

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Ministry.

Your personal data will be processed in accordance with the DPA and in the majority of circumstances; this will mean that your personal data will not be disclosed to third parties.

Questions

1. Purpose:

Please state whether or not there is a continuing need for the functions of the Civil/Family Justice Council as defined in its Terms of Reference.

2. Delivery

How should the CJC/FJC functions be delivered? Please consider the potential risks, costs and benefits of each.

- a. Should it be abolished?
- b. Should it be moved into the Ministry of Justice?
- c. Could it be delivered by the voluntary sector or by the private sector?
- d. Could it be merged with another existing body?
- e. Could the function be delivered by a new Executive Agency?
- f. Should it remain as an Arm's length Body?
- g. If it should remain an Arm's Length Body, does the existing model meet the 'three tests' which are:
 - Is this a technical function (which needs external expertise to deliver)?
 - Is this a function which needs to be, and be seen to be, delivered with absolute political impartiality (such as certain regulatory or funding functions)?
 - Is this a function which needs to be delivered independently of Ministers to establish facts and/or figures with integrity?

3. Other Comments

Do you have any further comment on the functions or form of the FJC/CJC?

Deadline for Response

Please submit your response by 1700 on Monday 25 November.

The email addresses for responses are;

cjcreview@judiciary.gsi.gov.uk for the Civil Justice Council Review
fjcreview@judiciary.gsi.gov.uk for the Family Justice Council Review

Useful Links

Cabinet Office guidance on triennial reviews:

http://www.civilservice.gov.uk/wp-content/uploads/2011/09/triennial-reviews-guidance-2011_tcm6-38900.pdf

Purpose of the Review

A Triennial Review is a Cabinet Office mandated process for reviewing the functions of Non-Departmental Public Bodies (NDPBs), the appropriateness of the body's delivery mechanism and its governance arrangements.

The Cabinet Office has identified two principal aims for Triennial Reviews:

- To provide a robust challenge of the continuing need for individual NDPBs – both their functions and their form; and
- Where it is agreed that a particular body should remain as an NDPB, to review the control and governance arrangements in place to ensure that the public body is complying with recognised principles of good corporate governance.

If one of the delivery options is the NDPB option, this must also include an assessment against the Government's 'three tests':

- Is this a technical function (which needs external expertise to deliver)?
- Is this a function which needs to be, and be seen to be, delivered with absolute political impartiality (such as certain regulatory or funding functions)?
- Is this a function which needs to be delivered independently of Ministers to establish facts and/or figures with integrity?

Functions of the Civil Justice Council and the Family Justice Council

The Civil Justice Council was established under the Civil Procedure Act 1997. It is responsible for overseeing and coordinating the modernisation of the CJS and for providing advice to the Lord Chancellor and others on the effectiveness of aspects of the CJS. It also makes recommendations to test, review or conduct research into specific areas.

The primary role of the Family Justice Council is promote an interdisciplinary approach to family justice and it is an advisory body to the Family Justice Board. The Council also monitors how effectively the family justice system delivers the service the Government and the public need, providing advice to the Family Justice Board. The FJC was not established under statute.

Terms of Reference

CJC

- The Civil Justice Council has a statutory duty under the Civil Procedure Act 1997 to:
- keep the CJS under review;
- consider how to make the CJS more accessible, fair and efficient;
- advise the Lord Chancellor and the Judiciary on the development of the CJS;
- refer proposals for change in the CJS to the Lord Chancellor and the Civil Procedure Committee and;
- make proposals for research.

FJC

The Family Justice Council aims to facilitate the delivery of better and quicker outcomes for families and children who use the family justice system.

The Council's primary role is to promote an inter-disciplinary approach to family justice, and through consultation and research, to monitor how effectively the system both as a whole and through its component parts delivers the service the Government and the public need and to advise on reforms necessary for continuous improvement. In particular it will:

Promote improved interdisciplinary working across the family justice system through inclusive discussion, communication and co-ordination between all agencies, including by way of seminars and conferences as appropriate;

Identify and disseminate best practice throughout the family justice system by facilitating a mutual exchange of information between local family justice Councils and the national Council, including information on local initiatives, and by identifying priorities for, and encouraging the conduct of, research;

Provide guidance and direction to achieve consistency of practice throughout the family justice system and submit proposals for new practice directions where appropriate;

Provide advice and make recommendations to Government on changes to legislation, practice and procedure, which will improve the workings of the family justice system.

Annex B: List of respondents

Civil Justice Council	
Respondent	Representing
*Alison Russell QC	Bar Council of England and Wales
Association of Personal injury Lawyers	
*Alistair Kinley	Berrymans Lace Mawer LLP
Anonymous response	
Bar Council of England and Wales	
Council of Her Majesty's Circuit Judges	
*Craig Budsworth	Garvins Solicitors
*Elizabeth Silver	
*John Spencer	Spencers Solicitors
The Law Society	
*Lord Dyson	Master of the Rolls
*Lord Justice Richards	
*Mark Harvey	Hugh James Solicitors
Medical Defence Union (MDU)	
*Peter W Smith	
*Professor Rachael Mulheron	Queen Mary University of London
*Rebecca Scott	RCJ Advice Bureau
*Robin Knowles, CBE QC	
*Tim Wallis	Solicitor
TUC	
UNISON	

* Member of CJC

Family Justice Council	
Respondent	Representing
*Alison Russell QC	Bar Council of England and Wales
Dr Brian Jacobs, Consultant child and adolescent psychiatrist	Maudsley Hospital CAFCASS
Consortium of Expert Witnesses to the Family Courts	
David Norgrove	Chair of Family Justice Board Family Law Bar Association
*Dr Heather Payne	Welsh Government
Howard Charles	Yorks and N Yorks LFJB Humber Region LFJB
Law Society	
*Sir James Munby, President of the Family Division	Magistrates' Association
*Mr Justice Cobb	Norfolk LFJB
Robin Knowles, CBE QC	Professor Rosemary Hunter, University of Kent

* Member of the Family Justice Council

Annex C

Members of Civil Justice Council at time of Review

Current Civil Justice Council Membership Category	Member
(1) Judiciary	
(a) Court of Appeal	The Master of the Rolls (Chairman)
The Deputy Head of Civil Justice	Lord Justice Richards
(b) High Court	Mr Justice Foskett
(c) County Court	His Hon Judge David Grant
	District Judge William Jackson
(2) Legal Profession	
(a) Solicitor	Mark Harvey
	John Spencer
(b) Barrister	Robin Knowles QC
(c) Legal Executive	Craig Budsworth
(3) Civil servant concerned with administration of justice	
Ministry of Justice	Richard Mason
(4) Consumer Affairs	
	Christopher Warner
(5) Lay Advice Sector	
	Rebecca Scott
(6) Specific Interests	
(a) Insurance	Vacant
	Peter Smith
(b) Trade Union	John Usher
(c) Business	Elizabeth Silver
(a) Policy Director in a Solicitors' Practice	Alistair Kinley
(b) ADR Provider	Tim Wallis
(c) Legal Academic	Rachael Mulheron
(d) Lay Member	Matthew Smerdon

Members of Family Justice Council at time of Review

Alison Russell QC	Family Silk
Caroline Little	Solicitor
Christina Blacklaws	Private Law Solicitor
Claire Phillips	Department of Health
DJ Liza Gordon-Saker	District Judge
DJ Nicholas Crichton CBE	District Judge (Magistrates Court)
Dominic Raeside	Family Mediator
Dr Elizabeth Gillett	Child Mental Health Specialist
Dr Heather Payne	Consultant Paediatrician
Fiona Green	Cafcass
HHJ Katharine Marshall	Circuit Judge
John Daly	Asst Director of Children's Services
John Hall	Ministry of Justice
Julie Rogers	Deputy Director of Children's Health & Social Care - Wales
Kathryn McManus	Department for Education
Keith Towler	Children's Commissioner for Wales
Malek Wan Daud	Family Barrister
Mark Andrews	Justice's Clerk
Martyn Cook	Magistrate
Mr Justice Cobb	High Court Judge
Ms Bridget Lindley	Consumer View - Parents
Paul Harris	HMCTS
Professor Anne Barlow	Academic
Rhian Davies	Cafcass CYMRU
Sir James Munby	Chair and President of the Family Division of the High Court
Sue Berelowitz	Deputy Children's Commissioner

Annex D: Critical Friends Group

Stage One

This Triennial Review, like all others, has benefited from the advice and support of a Critical Friends Group, who provide comment and challenge on the conclusions reached by the Review Team in order to ensure a robust approach.

The members of the Critical Friends Group for the Civil Justice and Council and Family Justice Council Reviews are listed below

Julie Lennard:	Head of the Chief Executive's Office, National Archives
Mary MacLeod:	Deputy Chair CAFCASS
John Hall:	Deputy Director, Family Justice, Ministry of Justice
Richard Mason:	Deputy Director Civil & Admin Justice, Ministry of Justice

Stage Two

The members of the Critical Friends Group for Stage Two are listed below

Julie Lennard:	Head of the Chief Executive's Office, National Archives
Mary MacLeod:	Deputy Chair CAFCASS
John Hall:	Deputy Director, Family Justice, Ministry of Justice
Richard Mason:	Deputy Director Civil & Admin Justice, Ministry of Justice

Annex E: Compliance Statement

1. Accountability	CJC	FJC	Issues/Recommendations
1. The Minister and sponsoring department should exercise appropriate scrutiny and oversight of the public body. This includes oversight of any public monies spent by, or on behalf of, the body.	Oversight of both Councils is done under the wider governance arrangements of the Judicial Office. (See attached JO Governance framework). The Ministry of Justice is represented at all Council and meetings.	Oversight of both Councils is done under the wider governance arrangements of the Judicial Office. (See attached JO Governance framework). The Ministry of Justice is represented at all Council and meetings.	
2. Appointments to the board should be made in line with any statutory requirements and, where appropriate, with the Code of Practice issued by the Commissioner for Public Appointments.	All public appointments are made in line with the Code of Practice issued by the Commissioner for Public Appointments (OCPA). The recruitment process is jointly managed by the Ministry of Justice Public Appointments Team.	All public appointments are made in line with the Code of Practice issued by the Commissioner for Public Appointments (OCPA). The recruitment process is jointly managed by the Ministry of Justice Public Appointments Team.	
3. The Minister will normally appoint the Chair and all board members of the public body and be able to remove individuals whose performance or conduct is unsatisfactory.	Chairs are ex-officio appointments. Judicial members appointed by LCJ and non-judicial members appointed by Ministers, in consultation with the President of the Family divisions. No formal mechanism is drawn up for handling performance issues but members are appraised annually by the Secretary and for judicial members by the Chairman.	Chairs are ex-officio appointments. Judicial members appointed by LCJ and non-judicial members appointed by Ministers, in consultation with the President of the Family divisions. No formal mechanism is drawn up for handling performance issues but members are appraised annually	Both Councils consider a more formal and consistent appraisal system for board members. While undertaking the process of this review the CJC has now introduced a more formal and consistent appraisal system.

4. The Minister should meet the Chair on a regular basis.	This happens on a regular basis and the Chair also has regular meetings with junior Ministers and senior Ministry officials.	The relevant Minister meets with the President of the Family Division once every term.	
5. There should be a requirement to inform Parliament and the public of the work of the public body through publication of an annual report (or equivalent publication).	2012/13 report available online. 2013/14 annual report to be prepared in coming months.	Recent annual reports have completed but have not been published	Both the CJC and FJC to publish annual reports in a timely manner on their websites.
6. The public body must be compliant with Data Protection legislation.	Both Councils comply with the legislation under the wider governance arrangements of the Judicial Office.	Both Councils comply with the legislation under the wider governance arrangements of the Judicial Office.	
7. The public body should be subject to the Public Records Acts 1958 and 1967.	Both Councils comply with the legislation under the wider governance arrangements of the Judicial Office.	Both Councils comply with the legislation under the wider governance arrangements of the Judicial Office.	
2. Role of the sponsoring department			
1. The departmental board's regular agenda should include scrutiny of the performance of the public body.	The Judicial Office has regular Senior Management Team meetings. These are in addition to regular meetings of the senior judiciary at the Judicial Executive Board. While there is no standing item to discuss the performance of both Councils at these meetings, should there be any issues they would be raised, and a table of policy issues includes CJC activities.	The Judicial Office has regular Senior Management Team meetings. These are in addition to regular meetings of the senior judiciary at the Judicial Executive Board. While there is no standing item to discuss the performance of both Councils at these meetings, should there be any issues they would be raised.	

2. There should be a document in place which sets out clearly the terms of reference of the public body. It should be accessible and understood by the sponsoring department and by all board members. It should be regularly reviewed and updated.	The CJC terms of reference are set in statute (http://www.legislation.gov.uk/ukpga/1997/12/crossheading/civil-justice-Council) so any review would need to be undertaken by the MoJ and approved by Parliament. They are available on the CJC website.	The FJC terms of reference are set out on the FJC website http://www.judiciary.gov.uk/about-the-judiciary/advisory-bodies/fjc/about-fjc/terms-reference . The terms of reference were most recently reviewed following the Family Justice Review where they were revised to reflect its role as in advising the Family Justice Board.	
3. There should be a dedicated sponsor team within the parent department. The role of the sponsor team should be clearly defined.	The Judicial Office is a small organisation and as such does not have a dedicated sponsor team. However members of the secretariat are also Judicial Office staff and the secretaries of both Councils report to the Deputy Director of the Judicial Office.	The Judicial Office is a small organisation and as such does not have a dedicated sponsor team. However members of the secretariat are also Judicial Office staff and the secretaries of both Councils report to the Deputy Director of the Judicial Office.	
4. There should be regular and ongoing dialogue between the sponsoring department and the public body.	Both Councils have secretariats that work for the JO. The Deputy Director of the JO also attends meetings of the Council as do representatives of the Ministry of Justice	Both Councils have secretariats that work for the JO. The Deputy Director of the JO also attends meetings of the Council as do representatives of the Ministry of Justice	
5. There should be an annual evaluation of the performance of the board and its committees – and of the Chair and individual board members.	The Secretariat has undertaken an assessment of each Council member.	Council members undertake a self assessment exercise. The deputy chair of the FJC assesses the frequency of attendance and contribution of each member.	Both Councils to consider a more formal assessment and one that is consistent between the two.

3. Role of the board members

1. There should be a formal, rigorous and transparent process for the appointment of non-executive members of the board. This should be compliant with the <i>Code of Practice</i> issued by the Commissioner for Public Appointments;	All appointments are made in line with the Code of Practice issued by the Commissioner for Public Appointments (OCPA). The recruitment process is jointly managed by the Ministry of Justice Public Appointments Team.	The FJC Handbook sets out the process of recruitment for ministerial and judicial appointments, including the reference to the OCPA Code of Conduct.	
2. Board members should be properly independent of the Department and of any vested interest (unless serving in an ex-officio or representative capacity).	The CJC publishes a register of members' interests.	The FJC has a register of members' interests but it is not currently published. It does have a Code of Conduct that all members sign up for http://www.judiciary.gov.uk/JCO%2fDocuments%2fFJC%2fCode+of+Practice+for+Council+Members.pdf	FJC to consider publishing register of members' interests.
3. Board members should be drawn from a wide range of diverse backgrounds. The board as a whole should have an appropriate balance of skills, experience, independence and knowledge.	The nature of both Councils require membership it to be drawn from a range of individuals with relevant expertise, however during Stage One of the review a responder identified the male gender bias and lack of diversity in the CJC as an issue.	The nature of both Councils require membership it to be drawn from a range of individuals with relevant expertise, however FJC members are mostly women with a marked absence of ethnic minorities. This reflects the broader issue that the pool of Family Law practitioners tends to be made up of more women than men.	CJC to draw up diversity plan for recruitment of board members and to make the plan publicly available.

4. The duties, role and responsibilities, terms of office and remuneration of board members should be set out clearly and formally defined in writing. Terms and conditions must be in line with Cabinet Office guidance and with any statutory requirements.	There is no remuneration for Council members. All new members receive an appointment letter on the role and duties of CJC membership. The Secretariat advise on any queries e.g. when CJC membership should and should not be cited in speeches/articles.	This is included to some extent in the FJC Handbook, which was updated last year.	FJC to publish handbook online.
5. All board members must allocate sufficient time to the board to discharge their responsibilities effectively.	This is made clear at interview, at an induction discussion and is a standing requirement	Council members devote their own time to working for the Councils	
6. There should be a proper induction process for new board members. This should be led by the Chair. There should be regular reviews by the Chair of individual members' training and development needs.	All new members have an induction meeting with the Secretary and an informal discussion with the Chair before their first Council meeting.	With the last set of new members, there was an informal meeting with the Chair (PFD) and they received a copy of the FJC Handbook, most recent annual report and business plan. The experience and knowledge of those joining the FJC mean there is less need for them to be brought up to speed on the issues to be discussed.	
7. All board members should ensure that high standards of corporate governance are observed at all times. This should include ensuring that the public body operates in an open, accountable and responsive way.	The CJC Secretariat have given a commitment to review this issue in 2014.	the FJC code of conduct ensures this.	
4. Role of the Chair			
1. the Board should be led by a non-executive Chair	n/a The Chair is an ex-officio role undertaken by the Master of the Rolls	n/a The Chair is an ex-officio role undertaken by the President of the Family Division	

2. There should be a formal, rigorous and transparent process for the appointment of the Chair. This should be compliant with the <i>Code of Practice</i> issued by the Commissioner for Public Appointments. The Chair should have a clearly defined role in the appointment of non-executive board members	N/A The Chair is an ex-officio role undertaken by the Master of the Rolls. The appointment of the MR is undertaken under Judicial Appointments Commission processes.	N/A The Chair is an ex-officio role undertaken by the President of the Family Division. The appointment of the PFD is undertaken under Judicial Appointments Commission processes.	
3. The duties, role and responsibilities, terms of office and remuneration of the Chair should be set out clearly and formally defined in writing. Terms and conditions must be in line with Cabinet Office guidance and with any statutory requirements. The responsibilities of the Chair will normally include:	The CJC Chair role is ex-officio and defined in statute (Civil Procedure Act 1997).	The FJC Chair role is ex-officio with the President of the Family Division taking the role.	
<ul style="list-style-type: none"> representing the public body in discussions with Ministers; 	Yes, through regular meetings with the relevant minister (see also 1.4)	Yes	
<ul style="list-style-type: none"> advising the sponsoring Department and Ministers about board appointments and the performance of individual non-executive board members; 	Yes (see also 1.4)	Yes	

<ul style="list-style-type: none"> ensuring that non-executive board members have a proper knowledge and understanding of their role and responsibilities. The Chair should ensure that new members undergo a proper induction process and is normally responsible for undertaking an annual assessment of non-executive board members' performance; 	Yes (see also 3.6)	Yes	
<ul style="list-style-type: none"> ensuring that the board, in reaching decisions, takes proper account of guidance provided by the sponsoring department or Ministers; 	Yes. MoJ representative present at all meetings.	Yes	
<ul style="list-style-type: none"> ensuring that the board carries out its business efficiently and effectively; and 	Yes, this is one of the main roles of the Chair.	Yes	
<ul style="list-style-type: none"> representing the views of the board to the general public. 	Yes, via Annual Report and other Council publications, plus events.	Yes	

5. Communication and Engagement

1. The public body should operate in line with the statutory requirements and spirit of the Freedom of Information Act 2000.	The Council complies with the FOIA under the Judicial Office framework.	The Council complies with the FOIA under the Judicial Office framework and this is contained in the FJC handbook.	
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2. The public body should make an explicit commitment to openness in all its activities. Where appropriate, it should establish clear and effective channels of communication with key stakeholders. It should engage and consult with the public on issues of real public interest or concern. This might include holding open meetings or annual public meetings. The results of reviews or inquiries should be published.	The CJC is transparent and inclusive in all its work. The Council undertake a number of conferences and public facing events, as well as public consultations.	The Council holds public meetings in accordance with Cabinet Office guidelines which are advertised in advance. They also undertake public events.	
3. The public body should proactively publish agendas and minutes of board meetings.	Minutes are published on the CJC website but most recent ones are not up yet.	Minutes not available on website.	Both Councils to publish minutes online in a timely manner.
4. There should be robust and effective systems in place to ensure that the public body is not, and is not perceived to be, engaging in political lobbying. There should also be restrictions on board members attending Party Conferences in a professional capacity.	This is dealt with by way of declarations prior to appointment and letters of appointment. Judicial members are also covered by the Judicial Code of Conduct.	Judicial members are also covered by the Judicial Code of Conduct and the FJC Handbook includes a Code of Conduct for non-judicial members.	

6. Conduct and Propriety

1. A Code of Conduct must be in place setting out the standards of personal and professional behaviour expected of all board members. This should follow the Cabinet Office Code. All members should be aware of the Code. The Code should form part of the terms and conditions of appointment.	Set out in letter of appointment, and CJC adhere to the Seven Principles of Public Life set out by the Committee on Standards in Public Life.	The FJC Handbook includes a Code of Practice for all members which requires members to comply with the Seven Principles of Public Life set out by the Committee on Standards in Public Life	
2. There are clear rules and procedures in place for managing conflicts of interest. There is a publicly available Register of Interests for board members. This is regularly updated.	Procedures for resolving any conflicts informal. Register of Interests publicly available.	Register of interests is not publicly available	Recommend making FJC register of interest publicly available
3. There must be clear rules in place governing the claiming of expenses. These should be published. Effective systems should be in place to ensure compliance with these rules.	Claiming of expenses fall under the Ministry of Justice and Judicial Office rules.	Claiming of expenses fall under the Ministry of Justice and Judicial office rules.	
4. There are clear rules and guidelines in place on political activity for board members and that there are effective systems in place to ensure compliance with any restrictions.	These rules are set out in letter of appointment and judicial members are covered by the Judicial Code of Conduct.	Judicial members are also covered by the Judicial Code of Conduct and the FJC Handbook includes a Code of Conduct for non-judicial members that address political activity.	
5. There are rules in place for board members and senior staff on the acceptance of appointments or employment after resignation or retirement. These are enforced effectively.	N/A members sit on the Council voluntarily.	N/A members sit on the Council voluntarily.	

Annex F: Judicial Office Governance Framework:

Compliance with Government-wide corporate guidance and instructions

The Judicial Office shall comply with the following general guidance documents and instructions:

1. Appropriate adaptations of sections of Corporate Governance in Central Government Departments: Code of Good Practice http://www.hm-treasury.gov.uk/d/corporate_governance_good_practice_july2011.pdf
2. Managing Public Money (MPM);
3. Government Internal Audit Standards, http://www.hm-treasury.gov.uk/psr_governance_gia_guidance.htm;
4. Management of Risk: Principles and Concepts: http://www.hm-treasury.gov.uk/d/orange_book.pdf;
5. Managing the Risk of Fraud, http://www.hm-treasury.gov.uk/...fraud_guide_for_managers.pdf;
6. Regularity, Propriety and Value for Money, www.hm-treasury.gov.uk/psr_governance_valueformoney.htm;
7. The Parliamentary and Health Service Ombudsman's Principles of Good Administration <http://www.ombudsman.org.uk/improving-public-service/ombudsmansprinciples/principles-of-good-administration>;
8. Relevant Freedom of Information Act guidance and instructions (Ministry of Justice);
9. Other relevant instruction and guidance issued by the central Departments;
10. Specific instructions and guidance issued by the MoJ as sponsor department;
11. Recommendations made by the PAC, the JO's external auditors, or by other Parliamentary authority, that have been accepted by the Government or the MoJ and are relevant to the JO.

Annex G: Supporting documents

CJC Annual report

<http://www.judiciary.gov.uk/related-offices-and-bodies/advisory-bodies/cjc/cjc-publications/cjc-annual-reports/>

FJC Annual Report

<http://www.judiciary.gov.uk/related-offices-and-bodies/advisory-bodies/fjc/reports-publications/annual-reports/>

FJC Business plan

<http://www.judiciary.gov.uk/related-offices-and-bodies/advisory-bodies/fjc/reports-publications/business-plans/>

CJC Business plan

<http://www.judiciary.gov.uk/related-offices-and-bodies/advisory-bodies/cjc/cjc-publications/cjc-business-plans/>

CJC Register of Members Interests

<http://www.judiciary.gov.uk/JCO%2fDocuments%2fCJC%2fPublications%2fOther+papers%2fRegister+of+CJC+Members+Interest+as+at+1st+October+2013.pdf>

CJC Minutes of meetings

<http://www.judiciary.gov.uk/related-offices-and-bodies/advisory-bodies/cjc/cjc-publications/minutes/>

CJC Register of Interests

<http://www.judiciary.gov.uk/wp-content/uploads/JCO/Documents/CJC/Publications/Other+papers/Register+of+CJ+C+Members+Interest+as+at+1st+October+2013.pdf>

Code of Practice commissioner of public appointments

<http://publicappointmentscommissioner.independent.gov.uk/wp-content/uploads/2012/02/Code-of-Practice-20121.pdf>

Judicial Appointments Commission process for appointing Heads of Divisions

<http://jac.judiciary.gov.uk/about-jac/senior-appointments.htm>

Guide to Judicial Conduct

http://www.judiciary.gov.uk/Resources/JCO/Documents/Guidance/judicial_conduct_2013.pdf

Civil Procedure Act 1997

<http://www.legislation.gov.uk/ukpga/1997/12/crossheading/civil-justice-Council>

Seven Principles of Public Life set out by the Committee on Standards in Public Life

<http://www.public-standards.gov.uk/>

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