

**Birmingham Law Society
Family Law Committee**

**Minutes of Meeting
12 March 2009**

Martineau, 1 Colmore Square, Birmingham B4 6AA

In attendance:

Mary Kaye	Martineau (Chairman)
Kate Booth	Martineau (Minutes)
District Judge Cole	
District Judge Dowding	
Vanessa Meachin	St Philips Chambers
Kate Luff	HMCS
Sue Daniels	HMCS
Janine Hall	HMCS

A. Apologies:

Jane Robson	Birmingham City Council (Vice Chairman)
Mark Saunderson	Mills & Reeve
Zahra Pabani	Shakespeare Putsman
Victoria Green	Blair Allison
Jayne Flemming	Sydney Mitchell
Grant Bird	Blair Allison

B. Matters arising:

It is important that people on the Committee attend these Committee Meetings.

Mary Kaye has been dealing with the members of the Family Finance Sub-Committee and they are likely to be joining this Committee. She has spoken to all members except Mike Follis who she has not been able to get in touch with as yet and the response has been good.

C. Public Funding:

Vanessa Meachin explained about the cuts proposed by Legal Services Commission. These are radical. The Bar and Solicitors are united. There has been a consultation process whereby people can attend and speak to the Legal Services Commission representatives including the policy makers. The meetings all seem to have been scheduled when people were in court. Those who were able to attend asked a series of reasonable questions and it would seem obvious that the cuts are lead by the Treasury. There is no real justification for them. At one such meeting a show of hands had been requested of those who would continue doing Legal Aid work and no hands were shown.

There has been a press release from the Bar Counsel about this which will be circulated. The Legal Services Commission proposes that a rate for advocacy which is unaffordable for Solicitors and Barristers. For example, the Interim Hearing fee is proposed that it is the same fee whether

there is a thirty minutes Directions appointment or a three day contested fact finding. The only people who will suffer are the families.

District Judge Dowding confirmed that the response is due next week and the judiciary are preparing a response. There is concern that if CAFCASS cannot fill the void in connection with s9.5 work then there is nothing left. The judiciary will be flagging that up.

Vanessa confirmed that individual responses are invited. The FLBA, Chambers, the Bar Counsel have already responded. After that there had been a criticism from the LSC that individuals themselves had not responded. It is all about numbers and getting the responses up. It is alarming that the Legal Services Commission do not recognise the importance of what we do.

D. Private Children:

District Judge Cole confirmed that Birmingham is going to be the pilot for a new scheme implemented from 1 May 2009. Under the scheme the application for Private Law Children Order will be issued and the First Directions appointment will be listed four weeks ahead. They will no longer go down the Dispute Resolution route. CAFCASS will provide an initial safety check and CAFCASS will attend at the first appointment. It is similar to the old conciliation lists that used to take place. It might be at the first Hearing that a report needs to be ordered.

At the moment CAFCASS have 60 reports unallocated and 18 guardians short. Birmingham will be the guinea pig for this.

Mary suggested that perhaps she needs to re-visit where she has been with the letter to McFarlane J as it had been hoped that this would go to the President of CAFCASS.

Committee members were concerned about the number of reports saying that there is no further role for CAFCASS. It was agreed that not having early intervention is crucial. It is not necessarily the report that is missing but, for example, in public law especially, we need someone at court at the outset.

The judiciary confirmed that the difficulty without having a report is what is there to inform of what the wishes of the child are? The parents always have different views. Without CAFCASS, then the other option is to get the child to court and that has all of its own difficulties. Without the report, the decision would have to be taken at the final Hearing after hearing evidence. Where the officer has given a measured and balanced report then there is more chance that it will settle a Directions Hearing at the stage before the statements have been ordered. CAFCASS are necessary in the more complex cases.

There was discussion as to the vacancies within CAFCASS. It is Janine Hall's understanding that there had been 3 officers off sick and that there were some vacancies. Previously CAFCASS had said that they had been prevented from employing self employed guardians but at the last meeting held with them and the court that was no longer the case. It had certainly been the case that they have not been allowed to recruit from some time.

The judicial contact statement is being sent out with new applications.

Discussions about the Resolution Parenting After Parting initiative. This is designed for separating parents to help them deal with the issues which may arise in respect of the children. The West Midlands is one of the pilot areas. At present there is a fee, although once the results of the pilot are in it may be that the Legal Services Commission will be asked to consider whether it would be appropriate for funding. The fees however will be much less than lawyers

fees. It is hoped that parents will be caught before contact difficulties become entrenched. District Judge Dowding has already adjourned a case for the parents to attend Parenting After Parting workshop and both parties were positive about it.

E. General Matters:

1. Consultation papers.

The Committee has done a response to the consultation on the new Family Procedure Rules. If people would like to see the response then a copy can be provided.

There has also been a judicial response. There is some concern that the overriding objective does not put the child at the centre of matters.

2. Any other business.

It was confirmed that petitions are getting better. The main problem at the moment is fee concessions. Zahra Pabani has been sent the check list that the court uses. If this is sent to Mary it can also be circulated around the Family Law Committee and get it as widely circulated as possible.

There are still difficulties with bundles. Very few people get them right. One of the difficulties is people not instructing Counsel early enough so the bundle contains everything which is not always relevant. There is no clear thinking about what the issues are. However, it was recognised that in some circumstances if there is something missing from the bundle then criticism would also be made.

There was discussion about whether there can be a Birmingham Practice Direction but this would not be possible. The court cannot issue a local Practice Direction. However the Judges do try to cover this in their individual directions. It is important that the Judge make it their business to find out what the issues are and do not just nod the cases through.

There were discussions about whether wasted costs orders would be an appropriate sanction. These are not good for the clients but there would only need to be one for everyone to start getting it right. However, from the clients point of view, they have been waiting a long time for their day in court. There is the possibility that matters could be taken out of the list but where progress can be made this might not be appropriate.

There is a technique being tried in public law using the new Case Progression Officer where an Own Motion Order can be made to ask people to come in to explain to the Judge why bundles have not been filed.

It is important that detailed Directions come out of the first appointment. There is also the possibility of holding Solicitors back after the Hearing to deal directly with bundles.

Mary confirmed that on 19 May 2009 there is a training day for Family lawyers being held with the Law Society at Martineau's offices. It is mainly related to compliance dealing with SRA rules and regulations and costs assessment. There is no reason that bundles cannot be included if somebody would like to speak on it.

District Judge Cole confirmed that District Judge Dowding will now be attending the Committee meetings. She covers the whole spectrum of both public and private law and is also an Ancilliary Relief specialist. District Judge Cole will be excusing himself after the May Committee meeting.

EMBARGOED UNTIL 0001 MONDAY 9 MARCH 2009



Vulnerable women and children bear brunt of cuts in family justice system

Expert family barristers are being driven away from their work to represent the interests of vulnerable women and children as a result of repeated cuts in legal aid pay, a new report says.

The study, by Dr Debora Price and Anne Laybourne of King's College London's King's Institute for the Study of Public Policy, finds that specialist family lawyers are deserting family legal aid work, which has been the subject of repeated cost-cutting measures by the Government.

Using a 'week in the life' study, the academics examined in detail over 5,000 cases being undertaken by more than 1,600 barristers in the third week of October 2008.

The Work of the Family Bar paints a picture of a profession close to breaking point as it struggles to cope with increasingly complex caseloads, the pressure to protect the interests of vulnerable clients, disruptive patterns of work and repeated, demoralising cuts in pay.

In publishing the report, the Bar Council and the Family Law Bar Association have joined forces to raise concerns over the threat to the future of the family Bar and its key role in the justice system. The move comes amid heightened public concern over the need for a stronger legal framework for child protection in the wake of the *Baby P* case.

Commenting on the report, Bar Chairman Desmond Browne QC said:

'This compelling report provides hard evidence that government policies are driving skilled advocates out of the family justice system, leaving the most vulnerable in society exposed to miscarriages of family justice.'

'The Bar Council is acutely aware of the deep commitment of family barristers, many of whom are now working to breaking point, as this research shows.

'It is especially regrettable that barristers are effectively penalised for doing legally aided family work, rather than privately paying work, and that this is hitting women and black and minority ethnic advocates hardest of all.'

Lucy Theis QC, Chairman of the Family Law Bar Association, which commissioned the study, said:

'The commitment of family barristers is reflected in their long hours, painstaking attention to the complexities of their cases, and the fact that many are now working under extreme pressure.

'The report shows that barristers are being driven away from family legal aid work. The consequences of this loss of expertise are extremely grave for some of the most vulnerable in society.

'Government and policymakers need to take heed of the consequences their decisions are having for the sharp end of a system designed to prevent abuse.

'Our research shows that it is possible to design a fair system of pay for this work and one which reflects the varying complexity of individual cases, while securing the interests of justice and value for the taxpayer.'

Dr Debora Price, the report's lead author, commented:

'The work of the family Bar bears a heavy responsibility: the consequences of failure in advocating a client's case are severe, and include the risk of children being returned to perpetrators of child abuse, the removal of a child from home and the loss of parental rights, domestic violence and homelessness.

'We found that legal aid pay for family barristers lags far behind private client rates and below the rates paid by local authorities. The differences are substantial, and they already create significant inequalities in representation in divorce cases between those who can afford to pay for a

barrister themselves and those who can't. If further cuts in legal aid rates are imposed then there is evidence that this will spread to cases involving serious child abuse too.'

Dr Price added:

'Family barristers work long hours and suffer considerable disruption to their home lives: many family barristers are suffering from emotional exhaustion as a result of their work.'

'Family barristers earn a relatively modest professional income given the complexity and seriousness of the cases they deal with; a quarter of them earn less than £44,000 a year, and half less than £66,000 a year.'

'Almost all family barristers supplement their legal aid work with privately paid income, but the more legal aid you do, the less you earn overall. Women, especially female Black and Minority Ethnic barristers do the most legal aid work and are the worst paid, with a quarter of female Black and Minority Ethnic barristers earning less than £32,000 a year.'

The report's findings include analysis of:

- The role that legal aid and the current 'graduated fee' system plays in the income and function of the family Bar, and the way in which barristers and sets of chambers adapted to the major legal aid changes introduced in 2001
- The specialisation undertaken within the family Bar including the split between legal aid and privately funded work
- The breakdown of the family Bar by gender and ethnic group, and respective average incomes
- Quantification of the workload and the emotional impact of cases, and an assessment of the drivers of case complexity

Published as the Legal Services Commission and the Ministry of Justice prepare to implement cuts to the Family Graduated Fee Scheme which were announced in February 2009, and are now proposing further, even greater, cuts the report will provide a major lobbying platform for the Bar.

These cuts will see the payments reduced by up to 55% in some cases, which will have a further, severe impact on vulnerable women and children

going through the family justice system, as they lose access to the specialist practitioners best able to represent them.

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Notes to editors

1. *The Work of the Family Bar, Report of the Week-at-a-glance Survey 2008*, by Debora Price PhD & Anne Laybourne MSc, King's Institute for the Study of Public Policy, King's College London, is available in summary form and in its complete version from the press office.
2. For more information please contact the Bar Council Press Office on 0207 222 2525.