

Report of the Committee on Family Law 2020

1. In 2020, members of the Bar's Committee on Family Law (CFamL) comprised Corinne Remedios (Chairman), Jeremy Chan (Vice Chairman), Bonnie Cheng (Treasurer), Theresa Chow (Secretary), David Pilbrow SC, Thelma Kwan, Mairead Rattigan, Robin Egerton, Richard Todd QC (E&W), and Lareina Chan.
2. Although we anticipated at the start of the year that we might have trouble meeting given the pandemic, with the assistance of Zoom, CFamL has addressed the unprecedented issues presented by Covid-19 and the General Adjournment of Court Proceedings (GAP).

A. GAP and Procedural Solutions: CFamL Letter - 10th February 2020

3. GAP took effect on Wednesday 29th January 2020 and was extended for a week on Saturday 1st February 2020; and again for another week on Saturday 8th February. On 8th February 2020, Bar Circular 22/2020 raised Concerns and/or Proposals regarding GAP.
4. With schools closed and parents working from home, dysfunctional families were forced to mingle with little respite. Economic difficulties flowing from Covid meant loss of gainful employment and default in maintenance payments. From a Family practitioner's point of view, already long court lists, followed by no court hearings and a rising backlog of cases all contributed to the Perfect Storm. CFamL met immediately online to discuss what solutions could be offered.
5. Two days later, on 10th February 2020, I wrote to the Chairman of the Bar with CFamL's proposals, which included:
 - a. more notice if GAP were to be further extended – the weekend immediately before further extended court closure is not sufficient;
 - b. less contentious matters could be dealt with by written/ emailed directions and with paper disposals of interlocutory applications;
 - c. more duty Judges appointed to hear urgent applications during GAP;
 - d. when proceedings resume, appoint more deputy Judges from the professions, bring back retired Judges, use alternative premises eg HKIAC, encourage the greater use of private FDRs;
 - e. impose strict limits on length of oral submissions;
 - f. introduce longer sitting hours;
 - g. introduce e-files and bundles;

- h. launch remote hearings for appeals and hearings that do not require evidence;
and
 - i. promote Private Financial Adjudication (PDSL 9) for adjudication without a Judge or a court.
- 6. The letter was followed by an email, sharing the practice of remote hearings in the UK.
- 7. Whether it emanated from our deliberations or otherwise, we noted that some of these measures have since been introduced in Family proceedings.

B. Private Financial Adjudication: Online Training Course - 3rd & 4th April

- 8. When GAP was extended on 28th March for another 2 weeks in April, it was clear that viable alternatives to traditional trials in Family matters had to be found. We arranged for the training of senior members of the 2 professions with the view to accreditation as Private Financial Adjudicators.
- 9. Within a week CFamL, in conjunction with the HK Family Law Association, organised a 2-day training course on 3rd and 4th April 2020, with papers for a Decision-writing Examination, to be submitted on 21st April 2020. CFamL members, Bonnie Cheng and Theresa Chow assisted me in setting up the training. London-based Family Arbitrator Suzanne Kingston led the training, backed by a Board of Examiners: The Hon Mr. Justice Coleman (Chairman), HH Judge Sharon Melloy, retired Family Court Judge Bruno Chan, Richard Todd QC and Bernard Man SC.
- 10. Our objective was to publicise PFA, encourage members of the professions to advise on and opt for this form of Dispute Resolution and therefore take some strain off the court lists.

C. Liaising with the Judiciary on PDSL 9: 29th April 2020

- 11. After the PFA Training course, I updated the Judiciary members of the Family Proceedings Court Users Committee (FPCUC) on the developments. Writing on behalf of the 3 practitioner members of the FPCUC, we observed that the absence in PDSL 9 of any form of appeal from a PFA Decision could be the reason for reluctance to use the process but shared that nevertheless the first Private Financial Adjudication hearing was then in the pipelines.

12. The Hon Mr. Justice Lam VP set up a socially distanced partly remote meeting on 29th April 2020 to discuss how such concerns could be addressed. This led to a revision of the Practice Direction, making it clear that a dissatisfied party could show cause why the Decision should not be made an Order of Court.
13. On 28th December 2020, PDSL 9 (as revised) was re-issued and the PFA pilot scheme extended for another 3 years.

D. “Private Financial Adjudication: Adjudicating a Family Case without a Judge in the Post-GAP Era” – 7th July 2020

14. The first of I hope many Private Financial Adjudications was held on 31st May 2020 and it was successful. On 7th July 2020, CFamL arranged for Mairead Rattigan and Robin Egerton, the 2 CFamL members who were opponents in that first PFA to speak at an online Talk on the nuts and bolts of the PFA process. Both branches of the profession and some Family Judges were invited to attend.

E. “A Virtual Meeting on the Virtual Court” – 21st April 2020

15. On 8th April 2020, the first VCF based remote Court of Appeal hearing took place.
16. On 21st April 2020, CFamL held a Zoom Seminar on remote hearings, spreading the word and technical know-how on the virtual court and the various platforms used in other jurisdictions. CFamL members Bonnie Cheng, Theresa Chow and Lareina Chan assisted me in compiling the material collected from other jurisdictions. Jeremy Chan and Richard Todd QC led the seminar. This was followed by speakers “from the floor”, namely The Hon Mr. Justice Coleman and Anita Yip SC.
17. Our objective was to promote remote hearings for Family cases. In this respect, we are pleased to see that the Judiciary’s Guidance Phase 3, coming into effect on 2nd January 2021, will permit the Court’s VCF to be accessed on browser-based platforms, using devices such as laptops and computers.

F. Email Security – 22nd July 2020

18. With the heightened concern as to security of virtual court proceedings and generally, on 22nd July 2020, CFamL ran a Seminar on email security, in the context of Family proceedings, and invited some solicitors to participate. Jeremy Chan explained the intricacies of the technology, and tried to update some of us dinosaurs.

G. Note on Remote, Telephone and Paper Disposal Hearings in Matrimonial and Family Hearings – 11th September 2020

19. In September, I wrote a Note on Remote, Telephone and Paper Disposal Hearings, which was adopted by the 2 other practitioner members of FPCUC, and submitted by us to the judiciary members of the FPCUC.
20. We wished to raise awareness of the issues faced by practitioners when cases were adjourned at short notice: was abortive work done billable, were brief fees chargeable, was any of this recoverable as costs? Rather than “osmosis”, we sought Guidance, on all forms of remote hearings.

H. Other Procedural Guidance

21. During the year, I and other members of CFamL attended many meetings arranged by the Law Society to deal with the various draft Guidances prepared by the Judiciary, including:
- a. Guidance on Transfer of Proceedings from the Family Court to the Court of First Instance
 - b. Guidance on evidence by television link in family proceedings
 - c. Guidance on expert evidence in family proceedings
 - d. Guidance on the inherent jurisdiction of the Court of First Instance in children matters
 - e. Guidance on Wards of Court
 - f. Guidance on Child Abduction and Custody Ordinance (Cap. 512) and Hague Proceedings.
22. A joint Note was presented to the FPCUC.

I. Reciprocal Recognition and Enforcement of Judgments in Matrimonial and Family Cases: Meeting with DoJ – 8th & 15th October 2020; Meeting on 4th January 2021

23. In the autumn, the Administration decided to expedite the Bill for Reciprocal Recognition and Enforcement of Judgments in Matrimonial and Family Cases. Jeremy Chan and I attended 2 meetings with the DoJ and the Law Society to discuss the DoJ's recent revisions to the draft Bill.

24. The discussions continue: Jeremy and I will meet with the Law Society and the Family Law Association on 4th January 2021, to discuss the further revised Bill which has since been presented to Legco.

CONCLUSION

25. Although it had seemed the Covid-19 restrictions in 2020 would curtail CFamL's activities, in fact CFamL was kept busy, looking for creative solutions to new issues. I thank all members of CFamL and Doreen Fan, Administrative Secretary, for their help and support in this unprecedented year.

26. It has been an honour and a privilege to head the Bar's Committee on Family Law since 2016. I pass the baton on next year, in the happy knowledge that we have worked well together as a team.

Corinne Remedios
Chairman, Committee on Family Law

31 December 2020