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## Guest Editors' Introduction to the Special Issue

### **Partnership in Practice: European perspectives**

Guest Editors: Janet Walker and Gabriela Misca

This Special Issue of the FCR celebrates a partnership between AFCC and RELATE, a major relationship support charity in England and Wales. It also celebrates the growing membership of AFCC by family law professionals across Europe. For many years a relatively small number of family law professionals and academics in Europe were members and followers of the AFCC family, acknowledging the benefits of sharing our ideas with a wider community of like-minded colleagues worldwide. Over the last three years we have welcomed a growing number of members and, although we are not yet in a firm enough position to form a European Chapter, we are forging a unique identity under the informal banner of "AFCC Europe". During that time, we have held a number of prestigious events and meetings attended by successive Presidents of AFCC and its Executive Director Peter Salem. Our enthusiasm stems from the desire to share and develop new ideas and to learn from each other despite coming from a number of different legal systems and cultures, and speaking many different languages. It is partnership that is driving our agenda and the continued development of AFCC in Europe will depend heavily on building strong partnerships.

In February 2018 AFCC partnered with Relate in England to hold a private consultation in the very beautiful surroundings of St George's House in the grounds of Windsor Castle. Relate is

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Walker, J., & Misca, G. (2019). *Partnership in Practice: European Perspectives. Family Court Review*, 57(3).

the leading relationships charity in the UK, established some 80 years ago, and every year it helps over a million people of all ages, backgrounds and sexual orientations to strengthen their relationships. The services include relationship education, relationship counselling for individuals and couples, family counselling, family mediation, children and young people's counselling and psycho-sexual therapy. Relate's vision is for a future in which healthy relationships are actively promoted as the basis of a thriving society. Relate offers services throughout England and Wales and at the local level Relate provides a wide range of additional services, including couple therapy for depression, domestic abuse support programmes, and services in prisons to support family relationships affected by imprisonment. In addition to providing face-to-face services, Relate also provides phone, email and online 'Live Chat' counselling. Relate works closely with the media to champion the importance of relationships in society, and with governments to ensure relationship support is kept at the heart of public policy. Relate conducts research to determine how relationships are changing and make recommendations on how government policy should respond.

AFCC and Relate share a passion for supporting family relationships and for modernising family justice to meet the needs of today's families. AFCC and Relate have come together on several occasions to further the work of AFCC in Europe and have partnered in the organisation of a number of promotional events, including a very successful meeting in the House of Lords, Westminster in 2016, attended by a number of the most senior judges in England, politicians, lawyers, academics and a range of family law professionals. Having developed a reputation for high profile events, in February 2018 we were fortunate to be able to meet in a closed two day session at Windsor.

Cite as:

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## The Consultation at St Georges' House, Windsor

St George's House is located within one of England's greatest royal residence, Windsor Castle, where successive monarchs have lived over many centuries. St George's House forms part of the fourteenth century foundations of the College of St George in the grounds of Windsor Castle. The heart of the College is St George's Chapel, where three times every day prayer is offered for the nation. This tradition was established in 1348 by King Edward III of England and continues to the present day. Over the centuries, St George's Chapel has witnessed many royal marriages, the latest being the weddings of Prince Harry and Meghan Markle and that of Princess Eugenie in 2018. The marriage of Prince Charles and Camilla Parker Bowles was blessed in the Chapel in 2005, and it is where ten monarchs are laid to rest, including King Henry VIII, Charles I and the Queen's parents and sister. In other words, St George's Chapel, built in the high medieval gothic style, is steeped in history as well as being a truly beautiful and sacred place.

St George's House itself was founded in 1966 by HRH The Duke of Edinburgh and the then Dean of Windsor, as a place where people of influence and responsibility can gather to grapple with significant issues facing contemporary society. The house is very old and offers a safe, cosy, physical and intellectual space set within the narrative of history but focused firmly on the future. It offers an environment receptive to new ideas, conducive to taking intellectual risks and to thinking through challenging topics in imaginative ways. The House is a sanctuary, removed from the pressures of everyday life, where the topic to hand takes precedence. It is this focus that encourages creative thinking, informed debate and sustained

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Walker, J., & Misca, G. (2019). *Partnership in Practice: European Perspectives. Family Court Review, 57(3)*.

engagement. The emphasis throughout the carefully crafted consultations held there is on dialogue and discussion. Participants are in a place where a real contribution to society can be made, where personal enrichment and social progress are mutually compatible, and a place where wisdom is nurtured through dialogue. This was a perfect place for AFCC and Relate to host a consultation about family relationships and family justice, and we are very grateful to St George's House for the opportunity and for their gracious hospitality.

## The Purpose of the Consultation

We live in a time of unprecedented diversity in household living arrangements, and of extensive social, cultural and economic change following a global recession. Continued economic uncertainty and austerity affecting daily life and fiscal policies in Europe, alongside the emergence of new opportunities and challenges, not least through technology, have meant that relationship support and family justice services need to keep pace with and respond to change if they are to remain relevant to individuals and families in a wide range of circumstances.

The consultation in Windsor was organised to enable in-depth discussions to generate ideas, practical solutions and effective and impactful ways to meet the needs of individuals, couples and families whose relationships are in difficulty and who may be facing family justice processes. This consultation was special in that it brought together twenty-six leading experts, practitioners, researchers and policy-makers in the fields of family relationships and family justice from eight countries in Europe, and the President and Executive Director of AFCC. It would have been wonderful to include people from more European countries, but language

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can be a major issue for some, and St George's House has restricted accommodation, determining the size of the group. The expectation is that all participants will be resident and commit to being present for the whole consultation. Dipping in and out is not permitted.

The purpose was to debate current issues and share knowledge and ideas for the future development of services, policy and practice to support family stability and ensure the best interests of children. The consultation was chaired by Yvonne Roberts, an award winning journalist, broadcaster and former Chief Leader Writer of the Observer newspaper, and now political writer in residence at the University of Sussex. The aim was for participants:

- To learn from each other and to promote greater inter-country and interdisciplinary collaboration
- To be inspired with new ideas that can be taken forward in the different jurisdictions represented at the consultation

The programme was tightly packed with sessions from breakfast until bed-time and the highlights included a private tour of St George's Chapel after dinner one evening, and optional attendance at Evensong and Holy Communion. The consultation also afforded the opportunity for a tour of Windsor Castle and a stroll around the grounds.

A report of the consultation was published in April 2018 (Walker and Marjoribanks, 2018) and this Special Issue of the Family Court Review has been designed to develop many of the themes that were discussed in Windsor, and it highlights the innovations that are taking place in family law in different jurisdictions in Europe.

The Articles in the Special Issue

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The first paper in this issue summarises the main themes of the consultation (which are recorded in the published report) in order to give readers of this special issue a flavour of the discussions that took place in Windsor. A full report is available from St George's House ([www.stgeorghouse.org](http://www.stgeorghouse.org)). The articles that follow the consultation summary are grouped into five sections, reflecting the cross-cutting themes which emerged from the range of issues that were debated: (1) the changing nature of family life and family justice; (2) innovations in services to support families in the community; (3) new court-based interventions in family justice in Europe; (4) hearing the voices of children in family justice; and (5) looking to the future: opportunities for improving the delivery of family justice.

## **1. The Changing Nature of Family Life**

David Marjoribanks and Janet Walker provided the context for the consultation, looking specifically at the changes in family life, the challenges they present and the implications for family justice and for services in the community that aim to support families. In their article they note that a key factor this century has been the global recession and the financial pressure that has impacted economies and families throughout the world. Debt has contributed to the breakdown of relationships and relationship breakdown can result in increased financial strain. These are both linked with poor mental health and poor outcomes for children. The authors argue that it is imperative that policies and interventions to support families take account of these pressures, particularly in respect of court-based services. Family courts everywhere have witnessed a huge rise in the number of litigants-in-person,

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and appropriate and affordable access to justice remains an important and often contentious issue.

## **2. Innovations in services to support families in the community**

The second theme highlights the growing emphasis on keeping families out of court. Separation and divorce are often regarded as personal, deeply private family matters that should be aired in court only in the most serious of circumstances. Helping families to resolve their disputes and manage the consequences of family breakdown out of court and with support from professionals in the community has become an important goal of family justice, with judicial adjudication being regarded as the last resort. This approach presents both challenges and opportunities for community-based organisations to develop new ways of working with separating families. Within this theme, practitioners in three different jurisdictions described new and innovative approaches to community support. In the first article, Rosanne Cubitt draws attention to new services in Scotland, initiated by Relationships Scotland. Her key message is that one size does not fit all separating families and that it is essential to tailor services to specific needs and circumstances. Relationships Scotland provides a range of support options and she demonstrates the value of tailoring services to fit each family by reference to a case study of Sam and his family. One of the most innovative projects has involved training hairdressers to be able to undertake effective listening and give initial support to their clients by signposting them to specialist support services. It is well-known that hairdressers often find themselves being used as confidantes. This project was much admired during the consultation as an effective way of harnessing the opportunities presented in everyday life to support family members in distress.



Cite as:

Walker, J., & Misca, G. (2019). *Partnership in Practice: European Perspectives. Family Court Review, 57(3)*.

At the consultation, Penny Mansfield described the development of an emotional readiness tool which has since been evaluated in England. Pivotal research in England has shown that the emotional readiness of separated parents to negotiate childcare arrangements with the child's other parent is crucial in determining the success of various out-of-court dispute resolution pathways. When couples separate, emotions frequently run high and one or both partners may not be able to sort out all the arrangements while they are dealing with their own stresses and conflicts. Efforts to encourage conciliatory approaches to conflict resolution may fail because parents are not emotionally ready to focus on resolving disputes together. This article describes the process of developing and testing a scale that practitioners can use to assess emotional readiness in future. The results are positive and demonstrate that the scale may be a useful measure to assess separating parents' readiness to make childcare arrangements. The team are currently working on a programme of research to assess the outcomes associated with different levels of emotional readiness, and to explore the dyadic nature of the construct.

The third article in this section examines the development and testing of a new manualized model of family mediation in Ireland. Drawing on research findings from many countries, Drs Conneely and O'Shea have road-tested an approach to mediation which incorporates ten key characteristics. Ireland was the first country in Europe to offer publicly funded family mediation in 1986 and the authors have built on this long tradition of community-based initiatives. The project leverages existing community resources in a creative way which enables parents and children to access a range of support services and mediation in their local community without undue delay. The authors are sure that this model is transferrable to other jurisdictions.

Cite as:

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### **3. Court-based interventions in Europe to support families**

During the St George's House consultation participants explored initiatives in different jurisdictions designed to support families within the family court setting. In this section innovations in four European countries are discussed. The emphasis in all of them is on developing new ways to reduce conflict and encourage interdisciplinary collaboration. In the first article, Brigitte Chin-A-Fat looks at the important changes in family law since 2009 in the Netherlands which mean that parents are obliged to include a parenting plan in their divorce petition. With an increasing focus on the children of divorce and their outcomes, the Dutch Government launched a 'Divorce Challenge' in 2016 with an open invitation to all the population to submit proposals to reduce high conflict divorce and the negative outcomes for children. During the challenge the judiciary were also looking at ways to reduce conflict and find better ways to support parents in the court system. They acknowledged the disjunction between the out-of-court processes and the in-court processes and looked for ways to bridge the gap and improve case management. Best practices were identified, an agenda for action developed and Experimental Legislation prepared. One of the dilemmas faced is whether one lawyer could and should act for the whole family, a dilemma that has been raised in other jurisdictions and one which challenges the traditional approach of one lawyer, one client.

Connie Capdevila Brophy and Chus Perez Crespo discuss the implementation of a parenting coordination programme for high conflict parents in Spain, within the context of an adversarial divorce process. The introduction of alternative dispute resolution. Collaborative law and therapeutic interventions have been slow to develop in Spain, but a recent initiative introduced parenting coordination. Using an individual case study, the authors demonstrate the value of this approach. The article considers the many challenges that have been

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experienced and make a number of recommendations. One of the biggest challenges is the need for substantive cultural change in the family justice system in Spain, but it is to be hoped that the efforts of dedicated professionals to offer parenting coordination programmes will assist this shift to occur.

In Sweden, the emphasis has also been on programmes to address high conflict. At St George's House, Marianne Gabrielsson described the multidisciplinary collaboration teams developed to prevent conflict between separating parents and promote parental cooperation. Swedish policy promotes shared parenting after divorce. Collaboration teams bring a range of professionals together, including social workers, school, counsellors, and family support workers. Using the DOORS assessment tool developed in Australia, the work of the collaboration teams has been evaluated and shown to be effective. Marianne and her colleagues describe the development of the team approach to reducing parental conflict and highlight the issues for further development, including responding to situations of domestic abuse, meeting the healthcare needs of parents and children and increasing children's participation.

In England, the Children and Family Court Advisory and Support Service (Cafcass) is a statutory body that straddles both public and private law in the family court. The article by Holly Dare and her colleagues showcases a pilot intervention which includes a package of interventions designed to help parents make safe and sustainable agreements and develop a parenting plan away from the court. The pilot involved a unique joined-up service delivery model, an end-to-end approach. Cafcass is also building a streamlined approach to working with families where harmful conflict is a key feature. The Cafcass Positive Coparenting Programme (CPPP) draws on systemic approaches which help parents to put themselves in their children's shoes, so as to

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Walker, J., & Misca, G. (2019). Partnership in Practice: European Perspectives. *Family Court Review*, 57(3).

understand what they are feeling and experiencing when parents are in conflict. These exciting new initiatives are at the forefront of innovative interventions to support parents and improve outcomes for children.

#### **4. Hearing the voices of children and young people in family justice**

Without doubt the driver of change and innovation in family justice across Europe is concern for children's wellbeing when their parents split up or their parents cannot adequately care for them. This theme comes through all the articles in this Special Issue of the FCR. Of increasing importance is the call by children and young people themselves to be heard and listened to when decisions are being taken which will affect their lives as they grow up. The next two articles explore this issue in more depth. In the first article, the co-editors of this Special Issue explore the evidence which supports the importance of children and young people having a voice in family proceedings and being given the opportunity to talk with the family law professionals who are helping parents to make decisions about future arrangements. They also look carefully at what we know about child development and how an understanding of developmental processes takes us beyond looking solely at the age of children when deciding whether they should be involved. Although there is almost universal agreement across the globe that listening to children and young people is both desirable and in children's best interests, the evidence suggests that whether and how they are heard varies considerably from jurisdiction to jurisdiction, and the UN Convention on the Rights of the Child (UNCRC) is interpreted very differently.

The second article in this section examines the practice in Germany where judges have been talking to children for many years and regard it as an uncontroversial and routine part of the

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family justice process. Joseph Salzgeber and Sophie Warning-Peltz present the findings of several studies of this practice in Germany. The vast majority of judges value being able to talk to children and young people and believe that it helps them with their decision-making. Moreover, they feel that the benefits outweigh any concerns people may have about causing stress for the children. The authors describe the recommendations for further improvements in the practice in Germany, including calls by judges for mandatory training and streamlined processes.

#### **5. Looking to the future in family justice: opportunities for improving the delivery of family justice**

In this final collection of five articles the authors look at the future delivery of family justice and consider the challenges and opportunities. A consistent theme is the importance of sharing ideas and learning from each other across disciplines and countries. The consultation at St George's House demonstrated very clearly that the issues being faced in family justice are similar in all jurisdictions, and there was universal agreement amongst participants that there is much that can be gained by sharing our learning, collating evidence internationally and developing common principles

Sir Ernest Ryder, Senior President of Tribunals in England and Wales, looks specifically at decision-making and justice. As the architect of the family justice modernisation programme in England, Ernest Ryder highlighted the need for frameworks of leadership and good practice. The aim of modernisation is to ensure that all judges are capable of making the highest quality decisions based on sound evidence and using a problem-solving approach. In his article he examines the principles that should underpin best practice and the use of evidence. He is

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Walker, J., & Misca, G. (2019). *Partnership in Practice: European Perspectives. Family Court Review, 57(3)*.

firm in his view that more must be done to improve decision-making, he puts experts under the microscope, and refers specifically to the work of the new Family Justice Observatory in England.

In the next article Karen Broadhurst and Teresa Williams describe the development of the Family Justice Observatory and what it sets out to achieve. The initiative was born from the concern that research evidence has been little used and has had a limited influence in decision-making in family justice, yet the decisions being taken daily in family courts have a far-reaching impact of the lives of children and their parents. The Nuffield Foundation in England has spearheaded the move to remedy this situation by establishing a new Family Justice Observatory which goes live in spring 2019. This is a collaborative, multi-disciplinary project to identify priority issues for data analysis and evidence synthesis. This exciting new project drew evidence from members of AFCC in its formative development, forging a partnership which will mature and blossom as the Observatory grows. It will be a resource for family law practitioners everywhere and it promises to be a catalyst for evidence-based decision-making in all jurisdictions, not just in the UK and Europe.

One of the guiding principles of family law reform is harnessing the power of user-involvement in the development and refining of family law processes. Drawing on international research, policy and practice from across the health and social care fields, Misca, Walker and Kaplan put forward arguments for the value of taking a bottom-up approach in designing and implementing innovations in family justice, embracing the views of family members, including children, as “service users”. They also note, however, that it is important to balance both the challenges and the opportunities offered by involving those who are

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Walker, J., & Misca, G. (2019). *Partnership in Practice: European Perspectives. Family Court Review*, 57(3).

‘experts by experience’ in Family Justice processes, in order to lead to improved services and user experiences.

As the twenty-first century unfolds, digitalisation increasingly influences all aspects of our daily lives. David Hodson asks us to consider the influence of digitalisation in family justice processes, pointing out that family law is increasingly being administered online. In his article he considers four distinct elements: the administration of justice; the resolution of justice; the practice of justice; and access to justice, arguing that this fourth aspect is critical in the new world of technology. The system of justice must deliver fair outcomes and this means justice for families. Hodson stresses that digital technology does not change what lawyers judges and the courts set out to achieve but it does change the ways family law professionals work and it changes the expectations of their clients. The challenge, perhaps, is how to embrace digital technology to enhance the practice of family justice without losing sight of the emotional and legal needs of families and the benefits of a personalised approach.

In the final article in this Special Issue the Executive Director of AFCC, Peter Salem, and past President, Annette Burns, reflect on the learning from the consultation at St. George’s House and suggest a number of guiding principles for family justice programmes wherever they may be developed and however they may be administered. A key overriding theme is that contemporary family justice interventions should be innovative, interdisciplinary and integrative. The guiding principles include the importance of testing new ideas, growing the evidence to ensure that all policies and practices are evidence-based, ensuring user involvement is the design of new programmes, and protecting vulnerable users of the family justice system. It is noteworthy that many of the innovations discussed at Windsor have been promoted and driven by the judiciary leading from the front.

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The consultation at Windsor proved the value of sharing ideas and innovations in family justice, irrespective of the variations in the delivery of family law in different jurisdictions. The universal aim in family justice is to support families and promote the best outcomes for children, and if we all adopt a set of guiding principles we can work towards greater collaboration and harmony between family law systems across the globe. The guiding principles get us closer to understanding and achieving what is 'good' in family justice. It is to be hoped that AFCC will continue to offer a platform for consultation and exchange in our complex and uncertain world.

We would like to thank all our AFCC Europe colleagues and participants at the St George's House consultation for their contributions to this Special Issue and, most importantly, for their commitment to and passion for finding new ways to protect and improve the lives of all those who use family justice systems across the world. It has been a privilege to work with them all.

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Editors Biographies:

**Emeritus Professor Janet Walker OBE FAcSS, FRSA**

Janet is Emeritus Professor of Family Policy at Newcastle University, England. She studied social sciences and trained and practised as a probation officer, family therapist and family mediator. Between 1985 and 2005, she directed over 50 studies of marriage, divorce, domestic violence, mediation, family law reform and parenting. Janet has been an expert consultant on family mediation at the Council of Europe, a member of the Ministry of Justice Mediation Task Force, and Co-Chair of the Government's Voice of the Child Dispute Resolution Advisory Group. She is appointed by the Ministry of Justice as a Lay Adviser to the multi-agency public protection arrangements relating to serious offenders and sex offenders in the community. She is currently working with Andrew Selous MP who has been commissioned by the Secretary of State for Defence in the UK to undertake an independent review of the support needs of military families in the UK. Janet is Vice Chair of the Board of Relate and Chair of the International Committee of AFCC, leading AFCC developments in Europe.

**Dr Gabriela Misca (PhD, CPsychol, CSci, AFBPsS, FHEA)**

Gabriela is a Chartered Psychologist and Associate Fellow of the British Psychological Society, who brings multidisciplinary perspective to her work, having studied, researched and taught in the field of child and family psychology and its interface with social policy and practice. She

Cite as:

Walker, J., & Misca, G. (2019). Partnership in Practice: European Perspectives. *Family Court Review*, 57(3).

is faculty member at the University of Worcester, UK, and her scholarship embraces interdisciplinary approaches to advance insights into the interplay between parenting in complex and/or adverse family circumstances and children's developmental adjustment. Recent recipient of a Fulbright Scholar Award in the USA, her current research focusses on issues related to military and veteran families and their children, their support needs in coping with the demands of military life transitions, and the visible and nonvisible combat injuries of the serving family member. She presented and published widely on these topics, and her recent books "Psychology and social work" (Wiley, 2017) and "Child and Adolescent Psychology for social work and allied professions" (Springer, 2018) make compelling arguments for research-informed practice in supporting families.

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