

SHADOW FAMILY JUSTICE BOARD

Minutes of the Eighth Meeting of the shadow Family Justice Board (sFJB) held on 20th February, 2020 at 4.15 pm in Judges' Assembly Room, Royal Courts of Justice, Belfast

Attendees: Mr Justice O'Hara (Chairman)
Stephen Martin (DoJ)
Eilis McDaniel (DoH)
Michael Foster (DoF)
Louise Murphy BL (Family Bar Association)
Suzanne Rice (Law Society)
Tom Cassidy (HSCT)
Marie Roulston (HSCB)
Peter Reynolds (NIGALA)
Kim Elliott (OLCJ)

Secretariat: Katharine McQuade (OLCJ)

1. The Chairman welcomed everyone to the meeting and thanked the members for their attendance. He formally recorded a note of thanks to Kelly Breen who has stepped down from the sFJB and extended a warm welcome to Suzanne Rice who has taken over as the Law Society representative following her appointment as Chair of the Family Law Committee.

Apologies

2. Apologies were noted from Deirdre Mahon, District Judge Collins, Judge Kinney, District Judge (MC) Prytherch, Master Sweeney, Peter Luney and Mandy Kilpatrick.

Minutes of the Meeting of 10th October 2019

3. The minutes of the last meeting were agreed and should be published.

Open Justice

4. The Chairman confirmed to members that a letter had issued on behalf of the sFJB to the DoJ to request that they establish the policy and progress open justice recommendations on a statutory basis. He referred members to the DoJ's response of 10th February 2020 which indicated that this is not currently one of the immediate priorities unless the sFJB felt this should take priority over single family court tier legislation. Members agreed that, while it would not take priority over other matters being progressed, it would be a pity to halt the pilot at this stage, and that the Minister should be asked to give some consideration, if possible, to progressing at least the rule change that would

enable the pilot scheme in the High Court to commence. It was agreed that a formal response should issue from the sFJB to the Department in these terms.

Action: Response to issue to DoJ confirming that the sFJB would welcome some priority being afforded, if possible, to the rule change required to launch the proposed pilot scheme allowing media access to cases in the Family Division of the High Court.

Voice of the child and vulnerable adults

Signs of Safety

5. Ms Roulston spoke to the update report on the Signs of Safety rollout. Mr Reynolds advised that NIGALA was meeting with the Bar on a regular basis and hoped to develop a process to feed back and address any issues concerning the framework in cases brought to court. Ms Rice said that the Law Society's Family Law Committee was exploring possible training issues. Ms Murphy extended an invite for the next meeting of the group on 10th March 2020 to the Law Society.
6. Mr Cassidy explained that the Trusts were considering how to embed the Signs of Safety language into documentation being presented to the court and how to establish the practice in engagements with the court. The Chairman advised that the judiciary had already undergone training and that he would request that a further presentation be delivered to the judiciary later in the year.

Action: Chairman to liaise with JSB to arrange a further Signs of Safety presentation to judiciary at a later stage in the year.

Guidance & Training

7. There was discussion surrounding the proposal raised at the sixth meeting of the sFJB that the Advocate's Gateway Toolkit on 'Vulnerable Witnesses and Parties in the Family Courts' be adapted for Northern Ireland. Ms Murphy explained that the Bar planned to introduce written guidance specific to the Bar on working with children and vulnerable adults. She also advised that their Education and Training Officer was exploring basic awareness courses for the Bar which would address both family and criminal proceedings.
8. The Chairman asked members to consider whether there might be scope for a sub-committee of the sFJB to be established to bring forward guidance for the family courts. There was discussion surrounding the DoJ multi-disciplinary training group, chaired by Geraldine Hanna, and whether a sub-committee of the sFJB could feed into the work of this group. Mrs Elliott explained that the DoJ group was focussed on criminal proceedings arising from serious sexual offences, but undertook to query whether the group's horizon scanning had registered any scope for their work to extend to the family courts. Ms Murphy

and Ms Rice also agreed to contact Ms Hanna to check if the work undertaken for the criminal sphere could be translated to the family courts.

Action: Mrs Elliott to verify the scope of the DoJ multi-disciplinary training group.

Action: Ms Murphy and Ms Rice to liaise with the Chair of the DoJ multi-disciplinary group and establish whether guidance prepared for the criminal courts on dealing with vulnerable witnesses could be translated to the family courts.

Resolutions outside court

9. Mr Martin confirmed that the DoJ has been continuing to work with the DoH to support the early resolution of private family law disputes. He said that the proposed action plan and animation will shortly be subject to Ministerial consideration and that he hoped to be in a position to confirm the launch date at the next sFJB meeting.

Mediation

10. Mr Martin advised that the LIP Reference Group were content for links to information on all mediation services to be made available on the LIP page of the DoJ website. He also noted the group's concern that there are some gaps in the range of services provided.

Key Priority Areas

11. The Chairman acknowledged that the newly appointed Justice Minister will require time to consider the recommendations from the Civil and Family Justice Review, which was published after the collapse of the Assembly, including the recommendations in relation to establishing the Family Justice Board on a statutory basis. Mr Martin said that primary legislation would be required to place the Family Justice Board on a statutory footing and that none of the four Bills in the current mandate could provide for this.
12. The Chairman queried whether divorce reform was likely to be a priority for the incoming Finance Minister. Mr Foster said that he hoped to be in a position at the next sFJB meeting to confirm whether the reform in this area would be a priority for his Department in the longer term.
13. The Chairman suggested that as 'Open Justice' and 'Divorce' could not be advanced further without legislative change they were not in the power of the sFJB to progress and should be removed as priority areas for the coming year. Members agreed with this approach. It was also agreed that 'Problem-solving courts', 'Single tier system', 'Voice of the child and vulnerable adults', and 'Resolutions outside court' should be reconfirmed as congoing priority areas. The Chairman suggested, and members agreed, that in light of progress

already being made in the areas of 'Public law' and 'Private law' these two areas should be recognised as new sFJB priority areas for the coming year.

Action: Secretariat to record that 'Open Justice' and 'Divorce' should be removed as key priority areas and that 'Public Law' and 'Private Law' have been recognised as new sFJB key priority areas.

Public law system

NIGALA and Overview of Article 56 Appointments

14. Mr Reynolds confirmed that the issue of Article 56 appointments had been referred to the Regional Assistant Director's Forum chaired by the HSC Board and that the Trusts had asked the Principal Practitioners for Court to review the Article 56 appointments to quality assure the Trust Reports, review thresholds and time-scales. He said that an evaluation report would be presented at the next meeting of the Assistant Director's Forum on 1st May 2020 and that he hoped to make this report available at the next sFJB meeting.
15. The Chairman informed members that he had recently delivered a judgment concerning Article 56 cases in which he had found the current practice of not appointing a Guardian ad Litem until the court has received the Article 56 report to be unlawful. The Chairman recognised that this practice had been adopted due to significant pressure on resources. Mr Reynolds said that NIGALA would be meeting to reflect on the ruling which had provided a significant policy steer. It was agreed that the issue should be included on the agenda of the next sFJB meeting. Ms Murphy suggested that it would be useful if the original Article 56 sub-group could meet in advance of the next sFJB meeting to explore the issues raised and report back to the sFJB.
16. The Chairman referred to the speech delivered by Sir John Gillen at the NIGALA conference on 14th February 2020 and noted that Sir John had made several recommendations that concerned the judiciary. He said that he would feed these back at the next judicial family law training session. He noted that Sir John also recommended that the Family Justice Board carry out some research into how often children are being interviewed by judges. Mr Martin suggested that, as some scoping work had been undertaken by DoJ in connection with recommendation FJ132 to extend the Young Witness Service to the family courts, there should be some information available on this issue.

Action: The issue raised regarding the timing of Article 56 appointments to be included on the agenda of the next sFJB meeting.

Action: The original sFJB Article 56 sub-group to meet in advance of the next sFJB meeting and explore the issues raised by the recent judgment.

Action: The Chairman to raise points made in Sir John's speech with Judicial Studies Board.

Action: Mr Martin to confirm if DoJ holds information on how often children are interviewed by judiciary in family law proceedings.

Guidance on Instructing Experts

17. Ms Rice explained that the sFJB sub-committee on 'Delay in Public Law Children Order Proceedings' had agreed that, rather than absorb the work of the sub-group established to consider 'Guidance on Instructing Experts', this sub-group should be retained, and issues identified regarding delay in expert reports may be referred to it in due course.

DoJ expert witness consultation

18. Mr Martin said that DoJ representatives had attended a meeting of the sFJB sub-committee on 'Delay' to advise members of their proposals for a pilot scheme to give solicitors general authority to appoint and pay expert witnesses in certain legally aided family law cases in the Family Proceedings Courts. He advised that the targeted consultation would be shared with the sFJB members when published.
19. The Chairman confirmed that following the last meeting his guidance note on the implications of the judgment delivered by Mrs Justice Keegan in 'XY' had been provided to the Bar and Law Society for circulation.

Delays in Children Order Cases/Performance Monitoring

20. The Chairman confirmed that a sub-committee, chaired by Judge Kinney, had been established to investigate the increasing delay in public law Children Order proceedings and that the minutes of its second meeting had been circulated to sFJB members.
21. The group confirmed the need for the proposed review of the COAC Best Practice Guidance. The Chair recalled this had been explored during the Care Proceedings Pilot but that resource issues had been encountered. The Chair queried whether a proposal could now be brought to the relevant Ministers for resources to update the Guidance for both public and private law cases. Mr Martin and Ms McDaniel agreed to discuss how this might be taken forward.
22. Ms Rice confirmed that the sub-committee's discussions to date had centred upon issues with adherence to the case management guidance for public law cases at higher tiers. It was agreed that an update from the sub-committee would be provided at the next sFJB meeting.

Action: Mr Martin and Ms McDaniel to discuss how a review of the COAC Best Practice Guidance might be progressed for both public and private law cases.

Action: Update from the sub-committee on 'Delay in Public Law Children Order Proceedings' to be provided at the next sFJB meeting.

DoJ consultation on 'Protecting victims of domestic abuse from being cross-examined by perpetrators in family court proceedings'

23. Mr Martin reported that there had been broad support for the proposals and that legislative provision to this effect will be included in the new Domestic Abuse Bill. The Chairman suggested that any need for a Practice Direction to accompany the legislation will be considered when it comes into force.

Correspondence

24. The Chairman informed members that correspondence had been received from Mairead Steward who is interested in piloting an intervention initiative in private law family disputes, and that a response had issued advising her to contact the DoJ as the lead in this area. Mr Martin confirmed that a meeting had taken place with Ms Steward.

Any Other Business

Advisory Group update

25. The Chairman noted that the minutes of the second meeting of the sFJB Advisory Group held on 4th November 2019 had been circulated to members.

Next Meeting

26. The date of the next meeting was agreed as **Thursday 21st May 2020 at 4.15pm.**