

## SHADOW FAMILY JUSTICE BOARD ADVISORY GROUP

**Minutes of the First Meeting of the shadow Family Justice Board Advisory Group held at 4.00pm on 27 February 2019 in the Judges' Assembly Room, Royal Courts of Justice, Belfast.**

Attendees:

Mandy Kilpatrick (Chair, Principal Private Secretary to the Lord Chief Justice)  
Ann Shaw (NSPCC)  
Colin Reid (NSPCC)  
Joan Davis (Family Mediation NI (FMNI))  
Dr John McCord (Ulster University)  
Eilis McDaniel (DoH)  
Peter Luney (NICTS)  
Stephen Martin (DoJ)

Secretariat: Kim Elliott (OLCJ)

1. The Chair welcomed everyone to the meeting and thanked the members for their attendance. She advised that the shadow Family Justice Board (sFJB) was established by the Lord Chief Justice in the absence of an Executive and, as such, is currently constrained in its powers. The purpose of this meeting was to update members on developments and the work of the sFJB, and to allow stakeholder organisations to provide their input and reflect the views of particular interest groups.
2. Three of those present (Mrs Shaw, Mr Reid and Ms Davis) advised that they had been involved in the Reference Group during Sir John Gillen's Review and welcomed the opportunity for continued input into progressing the recommendations.

### Apologies

3. Apologies were received from Mairead McCafferty (NI Commissioner for Children & Young People, (NICCY)). Health & Social Care Board (HSBC) have not yet confirmed a nominee to sit on the Advisory Group and a representative was not in attendance at this meeting.

## Priority areas

4. The Chair advised members that the sFJB has allocated leads to each of the family justice recommendations and that a phased approach to implementation of the recommendations will be required. She confirmed that this was due to a number of reasons including financial constraints and the absence of a functioning Executive. In order to maintain momentum the sFJB has agreed that the following six priority areas should be taken forward: Open Justice, Problem-solving courts, Single tier system, Voice of the child and vulnerable adults, Divorce Proceedings and Resolutions outside court.

## Open Justice

### Media In Court Pilot

5. Mrs Elliott outlined the progress made to date with the recommendations to provide greater transparency of justice in the family courts, the first of which was to afford the media access to fact finding hearings and other family courts in line with the position in the rest of the UK and Ireland. While this recommendation will require legislative change which is not currently possible, the other recommendations relate to largely practical issues which flow from this premise.
6. At a meeting with Judiciary, OLCJ senior managers, and the NI Editors Group on 21 June 2018, the Chair of the Shadow Family Justice Board, Mr Justice O'Hara, suggested that the recommendations be progressed by way of a pilot, starting in the Family Division of the High Court where the volume of cases is small. A 'Proof of Concept' phase for the Media In Court pilot launched on 26 November 2018, permitting two media representatives, Alan Erwin and Tara Mills (as agreed with the NI Editors Liaison Group (NIELG)), to attend family cases listed for hearing before Mr Justice O'Hara, in an effort to raise awareness of how such hearings work and help the media define their expectations. No reporting of proceedings is permitted during this initial phase which has been extended pending consideration by a sub-committee of the practical issues and controls needed to move beyond the trial period and sanction actual reporting.
7. Mrs Elliott explained that the sub-committee will include representatives from the Bar, the Law Society, NICTS and OLCJ and will be chaired by Mr Justice O'Hara. They will first meet on 6<sup>th</sup> March to address issues as to how the pilot

should be progressed, how journalists will be accredited to take part, and to identify protocols required to control its operation.

8. Mrs Shaw sought assurance that families were aware of the media presence in their cases. Mrs Elliott confirmed that legal representatives have been made aware of the proof of concept, and that notices were placed in the main court areas and outside the courtroom to highlight that media may be present. This will be further explored in the protocols to be developed by the sub-committee.
9. Mr Reid suggested the sFJB may find guidance for the media<sup>1</sup> compiled in 2012 / 2013 by the NSPCC, in conjunction with NI Association of Social Workers (NIASW), National Union of Journalists (NUJ), BASPCAN and thedetail.tv, useful for putting reporting of child related issues into context. Mrs Elliott said she was happy to pass on any advice or guidance available to the sub Committee.

### **Problem-solving courts**

#### **Family Drug and Alcohol Court (FDAC)**

10. Mr Martin explained that FDAC is an alternative approach to care proceedings that has been trialled in Newry by the Departments of Justice (DOJ) and Health (DOH) for children at risk because of parental substance misuse. FDAC takes a problem solving therapeutic approach with the aim of helping parents to stop using alcohol/drugs and keep families together wherever possible, bringing together services with a diverse range of expertise and authority with the collective aim of improving outcomes for vulnerable children and families.
11. Fourteen families have participated in the programme and six children have remained in the care of their family. The process of gathering data for the evaluation has commenced but it is recognised that the limited operating period may impact on the statistical viability of emergent data and capacity to assess impact and sustainability. Key factors emerging to date have been the age of the children subject to proceedings (mostly under five years), and the prevalence of domestic violence and / or long term mental health problems. Ms McDaniel explained that the issues presenting were more complex than anticipated, and suggested tighter criteria or triage for those entering the programme may have allowed better filtering for success, and these lessons will be captured in the evaluation.

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<sup>1</sup> [Guidance for Media Reporting on Child Abuse and Neglect in Northern Ireland](#)

12. Unfortunately the programme closed to new entrants in November to ensure intervention plans could complete by the end date of March 2019. Both Mr Martin and Ms McDaniel expressed disappointment that, while continued funding is available, the pilot will have to cease due to non-availability of experts, in particular Adult Mental Health professionals. Members agreed that the issues involved were multi-layered and complex and it was a pity that the programme had only been able to run for one year.

#### Domestic Violence Perpetrators Programme (DVPP)

13. The Chair advised that a court supervised domestic violence perpetrator programme (DVPP) was piloted at Londonderry Magistrates Court from March 2018, supported by a specialist team of probation staff, and a partner link worker. Unfortunately, uptake was much lower than hoped with legal representatives indicating that there was not enough benefit for the defendant who has to agree to accept a conviction in order to participate, with the judge then taking into account the offender's engagement with the programme when passing sentence.

14. Mr Martin confirmed that the DVPP would not be rolled out, and that funds would be diverted to other PBNI problem solving projects such as the Western Trust pilot which had been more successful at intervening in domestic violence behaviour prior to a criminal justice intervention, and should therefore also help to reduce some of the issues common in family court cases. Members agreed that it was always in the best interest of all family members to 'nip such behaviour in the bud'.

#### Substance Misuse Courts

15. Mr Luney advised that the Substance Misuse court pilot in Laganside Courts was working well and will continue with convicted offenders agreeing to complete a supervision and treatment programme, closely monitored and reviewed for their compliance with programme requirements, before the Judge passes sentence.

16. Dr McCord suggested that legal representatives should look to other jurisdictions, such as Australia, where they have a good body of case law and principles to guide and better inform and support the necessary processes. Mr Martin agreed to put Dr McCord in touch with the DOJ lead so this information may be passed on.

17. He also advised that NICTS will be looking to develop a Mental Health pilot together with PBNI and DOH. This will initially be limited to criminal court

interventions, although tackling the issues will also benefit the wider family. Ms McDaniel cautioned that the shortage of mental health professionals was a limiting factor.

18. Mr Reid advised that the NSPCC would continue to press for government policies to address the impact of domestic violence and substance misuse on children and hoped to explore options at their conference on 29<sup>th</sup> March, to which Peter May, and others, had been invited.

### **Single tier system**

19. The Chair explained that while it was a priority of sFJB to introduce a single family court, with the jurisdiction of the High Court preserved only for the most complex or legally sensitive cases, this required the Executive to legislate for. In the interim, administrative processes have been implemented to allow cases to be transferred more quickly as a way of reducing delay and arrangements in place are now working effectively in relation to delivery of case paperwork to judges.
20. Further work is being progressed by the Recorder and Judge Kinney to consider more effective case management within three or four family hearing centres aligned with health and social care (HSC) trust boundaries not only in public law cases but in private law cases, with court children's officers based in trust areas. Unfortunately proposals to move business out of Londonderry have raised objections from the profession that cannot easily be resolved but the courthouse cannot currently cater for the volume and mix of all business, and travelling distance to other venues within the region can prove difficult for court users.
21. Mrs Shaw highlighted that the NSPCC video-link facilities in Londonderry can connect witnesses to any venue in Northern Ireland. The members expressed an interest in considering the proposals, and the Chair agreed to circulate these after speaking with the Recorder.

**Action: OLCJ to circulate any updates regarding the Family Hearing Centres proposals.**

### **Voice of the child and vulnerable adults**

22. The Chair advised the group that the Judicial Studies Board (JSB) had hosted a Family Law workshop on 8 March 2018, to provide family judges with an improved insight into communicating with children and young people who are the subject of proceedings before them, and to provide family judges with an

update on current issues and decisions. The workshop included a presentation, arranged by NI Guardian ad Litem (NIGALA), by two young adults who spoke of their experiences in the family courts. This presentation was extremely well received by the judiciary who commended the young people and the valuable insights they provided.

#### Signs of Safety approach to child protection

23. Ms McDaniel explained that 'Signs of Safety' is a new way of working to ensure a child's voice is at the centre of child protection and to encourage professionals to take a 'strengths- based' approach to families and build on what is good. The training programme was launched by DoH, along with the Children's Service Improvement Board, in June 2018. It is being rolled out across all five Health Trusts, covering 2500 social workers, with a further 260 professionals in related fields to be trained in this approach over a 5 year period. It has received positive feedback from families, social workers and courts.
24. The Chair advised that JSB has also arranged for a presentation on the 'Signs of Safety' practice model to be shared at the upcoming Family Justice training event in March 2019. Safeguarding Board representatives (SBNI) have also been invited to attend the event and share their experiences with the judiciary.

#### NIGALA and Overview of Article 56 Appointments

25. The Chair advised that, at the sFJB meeting of 16 October 2018, NIGALA presented a draft paper on a 'Review of Article 56 appointments'. The paper was to inform discussion with judiciary and stakeholders in order to address efficient use of Guardian and Social Work resources and consider the impact of protracted private law proceedings on guardians, social workers and courts. The sFJB has requested that a sub-group meet to discuss the paper and it is hoped that they will be in a position to report back at the next meeting in June.

#### Guidance and training for legal profession

26. FJ127 recommended that: **The Bar Council and the Law Society to introduce guidance and specialist training for those questioning children and the vulnerable.** Mrs Elliott advised that at the last sFJB, the Law Society Family Committee confirmed that this will be on the agenda of a CPD event in the Autumn, and that the Bar intends to liaise with the Advocacy Training Board in respect of this training. NIGALA is also liaising with the Law Society and Bar to extend the 'Signs of Safety' practice model roll-out to professions by the Autumn.

27. Mrs Shaw raised concern that there is no mandatory training for the Judiciary or Legal Profession on child protection issues and some lack understanding on how to get the best evidence from children. The Chair advised that newly appointed Judges undertake specialist training on questioning children and JSB run regular events for the wider judiciary on specific topics. She advised that there has always been a difficulty in mandating specific training given the small jurisdiction and impact on the high volume of small local firms in NI. There was some discussion as to how to encourage the legal profession to undergo training events organised by the voluntary sector, with the observation that those best attended awarded CPD points, were extended beyond Belfast into more regional areas, and held outside normal court sitting times.

#### Registered Intermediaries

28. Mr Martin advised that Registered Intermediary (RI) schemes have been in place in the Crown Court to assist with the provision of evidence by vulnerable witnesses and defendants with communication difficulties. Informed by an initial scoping paper prepared by the DoJ, the sFJB has discussed the use of RIs and whether they could be introduced to the family courts as per FJ129 - 131. The experience of some Judges is that the process for their appointment has not always been straightforward, and they felt it would be preferable to await the refinement in the criminal courts before rolling out further. Work on establishing ground rules hearings will be used to inform how the programme may be adapted for the family side.

29. Mr Reid said he felt there were gaps in Public and Private Law cases that the Young Witness Service (YWS) could help fill by supporting child witnesses. Mr Martin said that he had discussed this with some family judiciary who deal with the volume of these cases in the Family Proceedings Courts but they had no recollection of a child ever having been called to give evidence in the lower courts and felt that it would not be in the interests of the child to introduce another party into an already over-crowded arena. Dr McCord said he was aware of one case before the Lord Chief Justice where the 15 year old child in a private law dispute gave evidence by video-link from Laganside Courts.

30. Ms Davis cautioned against third parties looking solely at the matter before the Court on any day without knowing the entire case and background, as they may, unintentionally, not really be putting forward the voice of the child which must be central to the proceedings. She felt that the timing of any interjection was crucial and most useful at the very early stages, but not so perhaps years down the line. Mrs Shaw agreed, highlighting a case where abuse of female family

members had been witnessed by the sons who had only come to realise their father's actions in hindsight many years later. Dr McCord said that Canada have a 'Family Re-Unification Approach' for such circumstances which is basically a short period of care with intensive de-programming to address the issues.

31. It was agreed that the YWS were a useful presence in courtrooms and Mr Reid confirmed they will continue to get involved where they feel they can assist. It was suggested that Mr Reid should revisit other options where YWS feel they may be of assistance and come back to the group with examples and benefits for discussion.

### **Divorce Proceedings**

32. The Report recommended that the divorce process in Northern Ireland should be more administrative and less court-based, simplifying the process in non-fault and undefended applications in particular. Mr Luney noted that the recommendations will require both political agreement and primary legislative change, which the sFJB and DOF have agreed they cannot progress in the absence of an Executive. In the interim, NICTS are considering piloting 'Online Application for Divorce', which may provide for basic application and upload of documents, or a non-contentious end-to end solution for Probate. A review is required to determine which would be most appropriate. Dr McCord suggested NICTS look at the Australian system for secure upload of documents. Mr Luney said they had done so, as well as the new system in England & Wales and would consider the lessons learned from others in developing solutions for NI.

### **Resolutions outside court**

33. Ms McDaniel advised the group that DoH is working with HSBC, senior Children's Court Officers and DoJ to develop an interactive information programme for parents who are separating to draw attention to the impact on their children. Work is in progress to determine the content of the programme, with a pilot to be launched in the Western Trust. An update will be provided at the next meeting of the sFJB in June.
34. Ms McDaniel and Ms Davis also confirmed that the 'Separating Parents' leaflets had been republished and redistributed by FMNI and DOH last year and had been noted by some GPs as a useful format to advise and sign post their patients. While DOH is restricted by budgets, Ms McDaniel assured the group that DOH continues to invest in mediation and hopes to fund a further 8-10 trained mediators in the coming year.



35. Mr Reid advised that NSPCC, FMNI, NICVA<sup>2</sup> and Lyndsay Fergus from thedetail.tv have been meeting to try to find ways for earlier mediation to divert separation issues away from the courts. He highlighted that even if they could divert one third of the 1000 Article 4<sup>3</sup> cases it would free up significant social services and court time and have better outcomes for the families involved. Ms McDaniel said that DOH already fund £1million in voluntary services but there may be scope to re-distribute or divert this to other areas to keep the momentum going in the absence of an Executive. It was suggested that members may wish to attend the 'Roundtable' event planned by the voluntary sector on 14<sup>th</sup> March to discuss ideas and perhaps shape a pilot.

### **Other areas - progress to date**

#### **Review of 'Guidance on Instructing Experts' in Public Law Proceedings**

36. The Chair advised that a sub-group consisting of the Law Society, Judge Kinney, LSA and NIGALA has met to look at current protocols and the delay in getting expert reports. The sub-group is producing a reworked guidance document and the latest version of this will be tabled at the next meeting of the sFJB in June. One of the key points being addressed in the document is the need to consider any requirement for expert evidence, and the identities of relevant available experts, at an earlier stage in proceedings.

### **Any other business**

37. Dr McCord said he had a particular interest in Litigants in Person (LIPs) and will soon publish his study of base data on mental health and LIPs, which he is happy to share. The Chair advised that the DOJ is taking forward the recommendations from both the civil and family justice review reports, under the direction of the shadow Civil Justice Council, but they would also report progress into the sFJB and this Advisory Group would be kept informed. Mr Martin confirmed that Sinead Mulhern who has extensive knowledge through her management of the Public Interest Litigation Support (PILS) Project, and her work with the Law

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<sup>2</sup> NI Council for Voluntary Action

<sup>3</sup> Article 4 of the Children (NI) Order 1995 : Report on Child's welfare : 'A court considering any question with respect to a child under this Order may ask an authority to arrange for a suitably qualified person to report to the court on such matters relating to the welfare of that child as are required to be dealt with in the report'.

Centre NI and Children's Law Centre, has agreed to chair the LIP Reference Group.

38. Mrs Elliott advised that it was agreed that the draft minutes of the sCJC meetings would be routinely circulated to members of its Advisory Group so they are aware of matters discussed at an early stage, and the same process would apply to this Group.
39. Members confirmed that the minutes of meetings of this Advisory Group should also be published online.

**Action: OLCJ to routinely circulate minutes of sFJB, consultations and any other documents as required.**

### **Frequency of meetings**

40. It was agreed that the Group should formally meet twice a year and that ad-hoc meetings of particular members could be arranged as required to discuss specific issues.