

## SHADOW FAMILY JUSTICE BOARD

### Minutes of the Ninth Meeting of the shadow Family Justice Board (sFJB) held on 24<sup>th</sup> September 2020 at 4.15pm via Webex video conferencing.

Attendees: Mrs Justice Keegan (Chair)  
Judge Kinney  
Master Sweeney  
Bronagh O'Reilly (DoJ)  
Peter Luney (NICTS)  
Eilis McDaniel (DoH)  
Deirdre Mahon (HSCT)  
Marie Roulston (HSCB)  
Peter Reynolds (NIGALA)  
Suzanne Simpson QC (Family Bar Association)  
Paul Andrews (LSA)  
Kim Elliott (OLCJ)

Secretariat: Ciara McFall (OLCJ)

1. The Chair welcomed everyone to the meeting and thanked members for their attendance. She noted that this was her first meeting as Chair since taking on the role of Senior Family Judge in April this year and thanked Mr Justice O'Hara for the progress made under his chairmanship over the first 2 ½ years. The Chair also formally recorded a note of thanks to Louise Murphy who has stepped down and extended a warm welcome to Suzanne Simpson QC who has taken over as the Bar representative following her appointment as Chair of the Family Bar Association. The Chair encouraged members to be open and candid when sharing their views and ideas on family law topics in this forum and advised that she intended to do likewise.

#### Apologies

2. Apologies were noted from District Judge Collins, District Judge (MC) Prythrech, Stephen Martin (DoJ), Suzanne Rice (Law Society), Michael Foster (DoF) and Mandy Kilpatrick (PPS to the Lord Chief Justice).

#### Minutes of the sFJB Meeting on 20<sup>th</sup> February 2020 and July written update

3. The minutes of the last meeting were agreed by members over the summer via correspondence and have been published. The Chair noted that a written update on matters reported by members had been circulated on 3<sup>rd</sup> July following the postponement of the meeting planned for 21<sup>st</sup> May due to Covid-19 restrictions. She asked if members were content for this update to be noted as agreed and published in lieu of minutes. Members agreed this approach.

## Covid-19: Business Continuity & Recovery

4. The Chair praised the efforts of Office of the Lord Chief Justice (OLCJ) staff who have worked collaboratively with the judiciary in preparing and publishing the range of business continuity guidance and forms in relation to the Covid-19 pandemic, now available on the JudiciaryNI website, and to Louise Murphy for drafting the initial version of the family contingency form. She noted she had also received correspondence from frontline representatives and was grateful for the exchange on issues arising. The Chair was pleased to report that family court business had continued throughout the pandemic.
5. Mr Luney updated members on the NICTS business continuity and recovery arrangements within the court estate, explaining that business had initially been consolidated into four court hubs which continued to facilitate urgent business in accordance with the Lord Chief Justice's directions. Technology has since been rolled out to support the move to homeworking, and allow more business to be dealt with remotely. NICTS' programme to reopen buildings and make them 'Covid-secure' has been phased in stages from 10<sup>th</sup> and 24<sup>th</sup> August and early September -all buildings except three of the smaller hearing centres at Magherafelt, Limavady and Strabane are now operational, with no immediate plans to re-open these venues.
6. The OLCJ have worked with judges to reallocate all courts scheduled pre-Covid-19 within the available courtrooms and NICTS have developed new weekly management information reports which have shown an increase in the number of disposals as courts have re-opened. Mr Luney recognised, however, that the court process will inevitably be slower as the backlog is dealt with and business is mainly transacted remotely, and the capacity for in-court hearings is significantly reduced due to social distancing requirements. He advised that the Lord Chief Justice (LCJ) has requested that NICTS urgently explore the use of external venues to supplement the reduced capacity in the court estate, with plans underway for locations identified in Belfast and Londonderry.
7. Ms Mahon provided a brief update on the impact of Covid-19 on the HSCT. She reported that most services have been stepped up again with social workers now working with families in person and that it has been almost 'business as usual' since July, however she acknowledged that the situation could inevitably change again depending on the scale of the pandemic. Temporary adjustments to the regulations enabled remote contact in the interim, and reduced need for statutory reviews. The Chair asked whether supervised contact is largely back on track. Ms Mahon indicated that it was, adding that a lot of supervised contact is still taking place remotely and that practice varied between Trusts and depending on individual circumstances, noting that some foster carers found managing remote contact more difficult while others saw it as a positive experience which lessened anxiety and improved behavioural issues in some instances.
8. Ms Mahon welcomed the news that court business is starting to return to a more steady state as some difficulties were reported in progressing business through

the family courts by social workers returning in August. The Chair remarked that she was not aware of such frustrations, adding that she has endeavoured to list all allocated cases in the Family Division but that the Family Proceedings Courts and Care Centres had much greater volumes. She noted judges in all court tiers have been doing their level best in terms of listing cases in restricted circumstances, and was encouraged that social workers have generally been very amenable to helping deal with the backlog in the current situation.

9. Ms McDaniel explained that the Health Minister has agreed to maintain the temporary regulations, which modified the Children Order to provide for practices and procedures to be conducted differently in light of Covid-19, until their natural expiry date of 7<sup>th</sup> November 2020.
10. Mr Reynolds reported that NIGALA are considering face-to-face contact for guardians and continue to implement their risk assessment framework to establish what is possible in terms of physical meetings and hearings. He said that NIGALA continue to make prominent use of remote technology which, on the whole, has worked reasonably well for guardians during the pandemic. Consultations which have taken place via WhatsApp and Zoom have worked particularly well for children, with the caveat that it is not always apparent who is present in the room with the child. Some 'teething problems' had been experienced with remote attendance at court but the technology was now operating effectively. Mr Reynolds praised the adaptability being shown by guardians and social workers to facilitate communication e.g. by video-link and outdoors, which has resulted in cases being resolved without the need to make specific Orders. The Chair commended all involved for alternative ways of working in these difficult times.
11. Judge Kinney echoed the frustrations in progressing business which has necessarily been at a slower rate in the Family Care Centre due to the general limitations and suitability of remote technology for family hearings. The Judge expressed his appreciation for the support provided by OLCJ staff during the pandemic and noted that he found huge benefit in using the forms, which the legal profession have helpfully completed, to inform case progression which can be conducted administratively, and free up valuable court time for hearings.
12. Ms Simpson QC said that the Bar had to adapt quickly in terms of business continuity arrangements. She acknowledged the significant contribution of stakeholders involved in all aspects of family cases, notably social workers for setting up indirect contact for parents in a way previously considered unachievable, for which the Trusts deserve huge credit. Ms Simpson QC commented that the Family Division have led from the front in terms of dealing with the impact of Covid-19, and acknowledged the availability of the judiciary to the profession throughout the pandemic, all of which has demonstrated the effectiveness of a joined-up approach.

13. The Chair concluded that the various business continuity and recovery arrangements put in place clearly illustrated the benefits of working collaboratively as a team, which she hoped would continue across the board.

#### Problem-solving courts

14. The Chair remarked that some great work is being progressed in the area of problem-solving courts, such as Master Sweeney's Financial Dispute Resolution (FDR) initiative and she hopes these can be built upon going forward. Ms O'Reilly updated members on the evaluation of the Family Drug and Alcohol Court, which will inform next steps. The evaluation is being developed with pro bono support from academics at QUB and it is hoped it will be completed in the Autumn and findings will be shared with the sFJB once available.

#### Voice of the child and vulnerable adults

##### *Signs of Safety*

15. Ms Roulston spoke to the update paper on the Signs of Safety rollout, which has been delayed to some extent by Covid-19 however the implementation process itself has continued within the Trusts on the basis of the training previously provided. Ms Roulston confirmed that funding for the programme has been secured for another year which she hopes will assist as they move towards further implementation as part of the restart of services. Ms Mahon referred to the evaluation of Signs of Safety carried out by Professor Eileen Munro which contained very positive perspectives from children, families and staff.

16. The Chair expressed an interest in learning more on Signs of Safety, and asked if a short presentation could be delivered by HSC at the next sFJB meeting. Ms Mahon advised that the judiciary had received a presentation a number of years ago on Signs of Safety and considered that a couple of hours would be required for a full understanding. Judge Kinney commented that this was a very worthwhile presentation in the past. Alternatively, it was suggested that Maurice Leeson of HSCB could provide a presentation for the sFJB on implementation of Signs of Safety which would run for approximately fifteen minutes. The Chair asked if this short briefing could include statistics on the uptake and outcomes, and undertook to take forward the need for a new training module with JSB.

**ACTIONS: It was agreed that a short presentation updating members on the implementation, associated statistics and outcomes of Signs of Safety should be delivered by the HSCB at the next sFJB meeting.**

**It was agreed that Signs of Safety should be incorporated into a judicial training session to be set up in the Autumn (The Chair undertook to take this forward)**

##### *Guidance and training*

17. Mr Reynolds advised that he had recently joined the DoJ multi-disciplinary training group, set up by the Strategic Justice Group on Sexual Harm (SJGSH) and chaired by Geraldine Hanna (Victim Support NI), to establish whether

guidance and training identified by the group for the criminal courts on dealing with vulnerable witnesses could be of mutual benefit to family practitioners. Mr Reynolds reported that he had attended two meetings at which the group have identified 12 separate learning themes. Draft learning frameworks will be developed and shared with OLCJ and sFJB in early 2021. The Chair noted that family practitioners are well used to different vulnerabilities, but recognised there are common issues such as coercive control and questioning by 'abusers', and said there is a critical need to look at any gaps in consistent practice across family / criminal cases. Mr Reynolds to keep members updated on the work of the group.

18. Mr Luney advised that the Domestic Abuse and Family Proceedings Bill 2020, currently at Committee stage in the Assembly, includes provision to prohibit cross-examination in person in family proceedings in certain circumstances, intended to protect victims of domestic abuse from being cross-examined by the perpetrator in person. Ms O'Reilly noted that the Minister also intends to bring forward amendments which would give a court hearing civil proceedings discretionary power to prohibit cross-examination in person; provide for special measures in family and civil proceedings for victims of domestic abuse and other offences; and amend the Children Order so that a court, considering an application for contact or residence, will also be required to have regard to harm caused to the child through seeing or hearing ill-treatment of another person, where the party applying for the order has been convicted of the new domestic abuse offence, or another offence and this has been aggravated by reason of involving a child. The Chair asked if this legislation was yet in force or whether there was any trajectory for implementation. Ms O'Reilly advised that the Bill was expected to complete Assembly stages by the end of 2020, receive Royal Assent early in 2021 and be operational by the end of 2021. Mr Luney undertook to circulate the link to the Bill provisions as introduced into the Assembly.

**Action: Mr Luney to circulate the link to the Domestic Abuse and Family Proceedings Bill 2020 provisions to members.**

#### Resolutions outside court

##### *DoH & DoJ Pilot Scheme*

19. Ms O'Reilly reported that progress has been made by DOJ and DoH on the pilot for an educative programme to support the early resolution of private family law disputes. The launch of the initiative has been impeded due to the pandemic and needs to be revised in light of social restrictions. It was now hoped that the pilot scheme would be delivered as part of a slightly wider Private Family Law Early Resolution Action Plan, which subject to Ministerial approval, is to be launched in the next couple of months. The Chair welcomed the active consideration of this early intervention programme, and asked that it be shared with the sFJB for their consideration prior to being launched.

**Action: Ms O'Reilly to share Action Plan and pilot proposals prior to launch.**

## Public law system

### *NIGALA and Article 56 Appointments*

20. The Chair referred to the recent judgment delivered by O'Hara J ([2020] NIFam 2) dealing with the appointment and discharge of the Guardian ad Litem (GAL) and asked Mr Reynolds if he could confirm there were no residual issues regarding the timing of Article 56 appointments. Mr Reynolds referred to his update paper which included information regarding developments elsewhere in the UK on the work and role of the GAL and outlined proposals for a 'refined role' going forward in managing workload in order to ensure that every child has a named guardian in time for a first hearing. He clarified that NIGALA does not have a policy regarding Article 56 appointments as all cases are triaged for prioritisation and the issue is rather the difficulty in the time and resources these cases place on a guardian's workload, which is part of wider resource issues for NIGALA. The Chair was reassured that there did not appear to be any particular gaps or difficulties regarding appointments at present. The Chair commented that reporting by guardians and social workers had generally improved and appeared to be more focused and concise in analysis, which is very helpful from a judicial perspective.
21. The Chair indicated that any suggested changes to the COAC Best Practice Guidance resulting from Mr Justice O'Hara's judgment could be considered in the context of the wider review of COAC Guidance which features later on the agenda.

### DoJ Expert witnesses consultation

22. Mr Andrews advised members that responses to DoJ's consultation on Expert Witnesses are being considered and a post consultation report will issue by November. It is expected that a pilot scheme for appointing expert witnesses without the need for prior authority will be launched in early 2021. He reported that no major issues have been encountered in terms of appointing expert witnesses for routine business and indicated that he was keen to progress the outworkings of the consultation.
23. Ms Mahon observed that, as Signs of Safety is implemented, the Trusts are finding there is a lot less need for expert witnesses and surmised that there would be fewer experts appointed as Signs of Safety is further rolled out.

### England & Wales (E&W) Public Law Working Group

24. The Chair noted that the report and best practice guidance on Special Guardianship Orders published in June 2020 had been circulated to members for information purposes.

### Private law proceedings

#### *England & Wales (E&W) Private Law Working Group (PrLWG)*

25. The Chair asked members if they wished to raise any issues arising from the Second Report of the PrLWG circulated in July on the approach taken to private disputes between parents with respect to the arrangements for their children's future welfare following a separation (April 2020). Members did not identify any particular issues to be addressed at this time in terms of changes within NI.

### Delays in Children Order Cases/ Performance Monitoring

#### *Review of the COAC Best Practice Guidance*

26. The Chair opined that the COAC Best Practice Guidance is outdated, not widely applied, with the exception of litigants in person, and requires streamlining. She considered, however, that there would only be merit in taking this update exercise forward if the guidance was going to be properly utilised. Judge Kinney concurred with the Chair's view and indicated that previous discussions as part of the Sub-committee on Delay concluded that there was insufficient funding and resources to take forward a root and branch review of the guidance, but there was some merit in revisiting that position to get a working system that can be followed by all.

27. The general consensus amongst members was that a review of the guidance was worthwhile but the sFJB had no funding to take this forward. Ms Mahon highlighted that various practice guidance documents have been created by principal court practitioners in the Trusts over the last number of years which could be gathered and collated. Mr Reynolds considered that the guidance was a valuable resource which drew all professionals together, and an update was required for practitioners regarding Article 56 appointments, however he did not think there was available resource at present to conduct a full review. Mr Reynolds suggested that perhaps hyperlinks to any updated practice guidance could be collated and wondered if a smaller sub-group of the sFJB could possibly consider. The Chair said the key issue to be addressed was the availability of funding and dedicated resources to take this work forward to ensure this does not remain an unaddressed need. Mr Luney agreed to look at possible funding options in conjunction with the other Departments, before any resources would be committed or sought by the sFJB. The matter will be tabled again for discussion at the next meeting.

**Action: Peter Luney to liaise with other departments with regards to funding options for a review of COAC Best Practice Guidance and Secretariat to table this issue for discussion at next sFJB meeting.**

*sFJB Sub-committee on Delay in Public Law Children Order Proceedings*

28. Judge Kinney informed members that meetings of both the sub-committee and its working group involving the PSNI had been postponed due to the pandemic. He advised that DoH and NIGALA had identified a sample of cases at each tier which had been in the system for more than 400 days by the end of March in a bid to identify the issues affecting disposal times, which would need to be revisited given the onset of Covid-19. Judge Kinney intends to reconvene the sub-committee meeting in the next few weeks to consider how this issue can be progressed. The Chair highlighted the issue of delays in disclosure in Children Order Proceedings, and suggested that a more joined up approach by the Trusts in terms of document requests might go some way towards addressing this issue. The Chair asked Judge Kinney if the sub-committee could also consider this issue.

In terms of the working group involving the PSNI and the legal profession, Ms Simpson QC undertook to follow up issues with the existing protocol for requesting information from the PSNI with Alison Douglas as she reported that attempts to obtain relevant papers are causing huge delays.

**Actions: Sub-committee to take forward issues of delay due to disclosure.**

Any Other Business

29. Ms McDaniel provided an overview of DoH's paper on the Adoption and Children Bill which summarised the key provisions for adoption and children more generally, including proposed amendments to the Children (NI) Order 1995. DoH are hopeful that the Bill will be introduced before the end of 2020 which should allow sufficient time for it to complete its passage through the Assembly before the end of the current mandate.

30. The Chair noted the postponement of the third meeting of the Advisory Group due to the pandemic and that an update paper had been circulated to members in April. No specific issues were identified by members to be raised with the Advisory Group.

31. Mr Andrews asked Judge Kinney if there was any concern that legal aid was causing a delay in transferring cases between Family Proceedings Courts and the Family Care Centre. The Judge indicated that this had not been an issue immediately before Covid-19 and was not a factor in recent months.

*Next Meeting*

32. The date of the next meeting was agreed as **Wednesday 10<sup>th</sup> February 2021**.