

SHADOW FAMILY JUSTICE BOARD ADVISORY GROUP

Minutes of the Third Meeting of the shadow Family Justice Board Advisory Group held at 4.00pm on 4 November 2020 via Webex video conferencing.

Attendees:

Mandy Kilpatrick (Chair)
Peter Luney (NICTS)
Stephen Martin (DoJ)
Eilis McDaniel (DoH)
Ann Shaw (NSPCC)
Natalie Whelehan (NSPCC)
Joan Davis (Family Mediation NI (FMNI)) *via telephone*
Dr John McCord (Ulster University)
Koulla Yiasouma (NICCY)
Kim Elliott (OLCJ)

Secretariat: Katharine McQuade (OLCJ)

1. The Chair welcomed everyone to the meeting and thanked the members for their attendance. It was noted that Natalie Whelehan had taken over from Jenni Boyce as NSPCC representative.

Apologies

2. Apologies were received from Martin Quinn (HSCB) and Mairead McCafferty (NI Commissioner for Children & Young People (NICCY)).

Minutes of the Meeting on 4th November 2019 and April 2020 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 4th April following the postponement of the planned summer meeting due to Covid-19 restrictions.

COVID-19: Business continuity and recovery

4. 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 10th

and 24th 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. Work is also underway to bring Banbridge courthouse online in January/February 2021. Mr Luney explained that some changes to the court calendar have been necessitated in light of the continuity arrangements.

5. NICTS have developed new weekly management information reports which have shown an increase in the number of disposals as courts have re-opened. However the court process will inevitably be slower as the backlog is dealt with, and the capacity for in-court hearings is significantly reduced due to social distancing requirements. Mr Luney advised that the Lord Chief Justice 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. He said that the Minister is also keen to see progress regarding these ‘nightingale venues’ in the current calendar year and that work is underway to procure additional resources to service the nightingale venues when they come on stream.
6. The Chair noted that, particularly in regard to family business, a collaborative effort had been made early on in the recovery process to ensure that cases could be dealt with administratively where possible.

Problem-solving courts

Family Drug and Alcohol Court (FDAC)

7. Mr Martin updated members on the position with the FDAC pilot evaluation. He advised that the evaluation is being developed with pro bono support from academics at QUB but progress has unfortunately been impacted by strain on those resources caused by the pandemic. He explained that there is a quantitative aspect to the evaluation and also an analysis of interviews with participants. He confirmed that the evaluation would be shared with members when completed and that any future rollout of the pilot would depend upon the availability of resources and what the evaluation says regarding outcomes.
8. Ms Yiasouma said that the FDAC presented a significant way forward and it was very unfortunate that any progression was being delayed.

Voice of the child and vulnerable adults

Signs of Safety (SoS)

9. Ms McDaniel informed members that the SoS model was a new strengths based way of working and was now in year three of the five year timeframe for implementation. She explained that as part of monitoring the effectiveness of implementation an annual staff and parent survey was undertaken initially in 2019 and then in 2020. Areas for improvement have been noted but the staff survey suggests the workforce is generally positive. Ms McDaniel also confirmed that the parent survey indicated that 73% of parents felt that their social worker carried through on commitments made and 85% of parents felt that the social worker was clear about their concerns regarding the family situation.

Guidance and training

10. The Chair reported that Peter Reynolds, CEO of NIGALA, has recently accepted an invitation to join 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 will provide a direct link between the group and the sFJB. The Chair said that the group have identified 12 separate learning themes and some helpful points may emerge from this engagement.

Resolutions outside court

DoH & DoJ – Private Family Law Early Resolution Action Plan

11. Mr Martin advised that DoJ has been continuing to work with DoH to develop an action plan to support the early resolution of private family law disputes but that the work is not as far advanced in terms of product at this stage as had been hoped. The focus is upon a framework for developing alternatives to court. The new products under development will centre upon communication in the first instance and will include an animation and a visual court tour. Mr Martin said that the aim is to publish the action plan before the end of the calendar year and to do more work in terms of product as resources permit.
12. Mr Martin acknowledged that most of the work completed to date has focused on parents but confirmed that allowing the voice of the child to be heard is also a priority. He suggested that it would be useful to engage with both NICCY and NSPCC early next year regarding best practice in this respect.

13. Dr McCord advised that the Litigants In Person (LIP) Research Advisory Group was developing tools with a Design Group to assist LIP with the court process and suggested that there may be some useful cross-over for the Private Family Law Early Resolution Action Plan, for example the development of auto-populating online forms, and an online navigation tool to guide litigants to the relevant part of the legal process. Dr McCord circulated a short video to members demonstrating the tools under development. Mr Martin welcomed this suggestion and said that he and/or his colleague Bronagh O'Reilly would liaise with Dr McCord to discuss the work of the Design Group in further detail, to make sure the projects dovetail rather than duplicate.

Action: Dr McCord to circulate video to members demonstrating the online navigation tools being developed as part of the second LIP Research Advisory Group project.

Action: Mr Martin/Ms O'Reilly to liaise with Dr McCord regarding potential cross-over between the work of the Design Group and the Private Family Law Early Resolution Action Plan.

14. Ms Davis said that she had recently liaised with Bronagh O'Reilly in DoJ and emphasised the importance of involving stakeholders in the action plan, linking in with organisations that work directly with children. She explained that Family Mediation NI offered child inclusive mediation and have developed child friendly literature to explain the mediation process. They have also conducted research into the child inclusive mediation process in Australia, and are working on their own 'Sliding Doors' animation to raise awareness of options to avoid parental conflict and avoid court. She highlighted the importance of working collectively to raise awareness of the available options and to encourage resolution without recourse to court. Ms Shaw agreed that coordinated working is important and referred to previous work undertaken by the NSPCC regarding the voice of the child - including the production of a video to familiarise children with the court environment. She stressed that an all-inclusive package was needed which involved children at all stages of the process, in essence a one-stop shop which signposted to all the different eventualities. Mr Martin welcomed this input and invited members to contact him directly if they wished to discuss the action plan further.

15. Ms Yiousama explained that NICCY had no remit in private law cases, but queried whether a timeframe had been identified around embedding the voice of the child in the action plan. Mr Martin explained that the first year

was geared towards creating the communication products which would be focused on parents, but thought there may be some areas which could be aimed towards both parents and children, for example the virtual tour of the court could also be devised in a child-friendly format which would run alongside the adult product. Ms Yiousama said that she was happy to share any advice with Mr Martin and his team to ensure the voice of the child could be embedded in the action plan.

Public Law System

Timing of Article 56 appointments

16. 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) - a link to the judgment could be circulated to members.

DoJ Expert witnesses consultation

17. Mr Martin advised that DoJ are considering consultation responses and hope to launch a pilot scheme in early 2021, to permit solicitors to appoint and pay expert witnesses in certain legally aided family law cases in the Family Proceedings Court (FPC) without the need to obtain prior authority. Mr Martin advised that the previous Care Proceedings Pilot had identified the appointment of experts as a source of delay and it is anticipated that the DoJ pilot scheme will shorten this process by a number of weeks. He confirmed that the evaluation of the pilot will seek input from stakeholders and the judiciary and will focus upon both value for money and the impact of the scheme upon delay.

Private Law Proceedings

Introduction of Domestic Abuse and Family Proceedings Bill 2020 in Northern Ireland

18. Mr Martin confirmed that the Justice Committee had completed its scrutiny of the Bill which is now before the Assembly for consideration. The Bill 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.
19. The Chair referred to existing special measures arrangements in criminal proceedings and noted ongoing discussions around the location of Remote Evidence Centres (REC) that may have potential to be used in civil and family proceedings. Ms Whelehan confirmed that NSPCC are working on a research paper for the Minister drawing upon experience from the NSPCC Young Witness Service (YWS) remote live link in Foyle; and are part of a working

group looking at Domestic Abuse Orders to be taken forward as part of the Miscellaneous Provisions Bill.

Delays in Children Order Cases/Performance Monitoring

Review of COAC Best Practice Guidance

20. The Chair informed members that the general consensus of sFJB members was that a review of the COAC Best Practice Guidance was worthwhile but the sFJB had no funding to take this forward. NICTS has agreed to look at possible funding options in conjunction with the other Departments, before any resources would be committed or sought by the sFJB.
21. The Chair queried if there were any particular areas of the guidance that the Advisory Group members felt would benefit from a review. Dr McCord suggested that it would be useful to review the guidance surrounding the mode of appeal from the FPC to FCC following Judge Kinney's judgement, and he may come across other areas when working with the LIP group creating a 'Plain English' guide to the procedures. Mr Luney explained that some work would be required in the first instance to scope out the areas a review would potentially focus upon which he expected could take 6 months, before the resource issue could be explored. He advised that the NICTS focus was currently upon recovery but considered that he should be in a position to provide an update at the next Advisory Group meeting.

Sub-committee on Delay in Public Law Children Order Proceedings

22. Mrs Elliott reported that the sub-committee's working group involving the PSNI and the legal profession have discussed delays arising from criminal investigations related to Children Order cases in particular issues with the existing protocol, and are revising the pro forma for requesting information from the PSNI. She also said 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, however the sample will need to be re-visited given the onset of Covid-19. Mrs Elliott advised members that the sFJB would be grateful for any information or insight they might have concerning delay that could be conveyed to the sub-committee.
23. Ms McDaniel said that attention will initially need to be focused on the backlog of cases which has arisen since the onset of the pandemic, and then the sFJB can begin to consider how to regain some of the progress which has been lost since the conclusion of the Care Proceedings Pilot. She explained

that following the pilot DoH had invested in senior practitioners however other steps are required alongside this to see a reduction in timeframes associated with care proceedings.

Litigants In Person

24. Mr Martin updated members on the work of the LIP Reference Group established in 2019 focusing primarily on family business. The group, on which Mr Justice McAlinden represents the judiciary, is working to identify practical steps to make the court easier to navigate for LIP and to find ways of building a greater mutual understanding. He reported that the sponsors of the LIP Reference Group organised a workshop on working with distressed litigants in person as part of a wider two day visit by the Access to Justice Foundation on 10th - 11th February 2020 which was well attended and reported to be beneficial.
25. Dr McCord advised that the University of Ulster were also looking at hosting a website traversing LIP group initiatives, and that the Nuffield Family Justice Observatory (NFJO) had undertaken a rapid consultation in April, on behalf of the President of the Family Division in England & Wales, on the use of remote hearings in the family court. He also confirmed that the School of Law at Ulster University had procured funding from the NFJO to conduct a rapid consultation on the impact of COVID-19 on family justice in Northern Ireland. The survey was recently disseminated to practitioners and parents and is live until 8 November 2020. It is hoped that the results will be published in December and will feed into the NICTS business recovery planning.
26. The Chair informed members that Mrs Elliott had produced guidance and forms for LIP to complete to assist with business continuity during the pandemic, and that the senior Family Judge had recently heard a LIP case. She explained that composite forms had been constructed to reduce complication but welcomed any suggestions from members in this respect. Dr McCord commended the LIPCI1 and HR1 forms and advised that litigants had found them very helpful. He said that he hoped to incorporate the new forms and guidance that have flowed from OLCJ into the ongoing LIP research and project work. He referred again to his work with the Legal Innovation Centre to develop user-centred website tools for LIP, and explained how they were constructing a question architecture, populated in a user-friendly way, to help navigate LIP through the legal process. The Chair thanked Dr McCord and looked forward to hearing more on this work.

Adoption and Children Bill

27. Ms McDaniel explained that the purpose of the Bill is to modernise adoption legislation to make it more child-centred and rights-focused and that NICCY has had sight of the detail. She said that the Bill is likely to be introduced in early 2021 and should complete its passage through the Assembly before the end of the current mandate.
28. Ms McDaniel also reported that the Bill contained a change to the definition of harm to include those witnessing harm of another. Ms Shaw queried whether this definition included psychological harm as well as physical harm and there was discussion amongst members surrounding the difficulties for children in both registering and articulating psychological harm. Ms McDaniel confirmed that the intention is to reflect the definition of harm which appears in the Domestic Abuse Bill. Ms Yiousama considered that the use of this definition would open up the provisions of the Children Order to young people, so that the psychological aspects could be investigated.

Any Other Business

29. Members had no issues to raise regarding either the E&W Public Law Working Group report on Special Guardianship Orders or the Second Report of the E&W Private Law Working Group, links to both of which had been circulated to member in advance of the meeting.
30. The Chair advised that the next meeting of the sFJB would again revisit the priority areas and she invited members to consider which areas they felt that the sFJB should focus on, bearing in mind that some recommendations require legislative change or policy decisions in order to be progressed. She asked that members forward their views to the secretariat by mid-January at the latest. It was agreed that, if members felt it would be beneficial, a short meeting of the Advisory Group could also be convened in advance of the next sFJB meeting in order for members to discuss their views.

Next Meeting

31. The Chair confirmed that the next sFJB meeting was scheduled in February 2021 and that the next full meeting of the Advisory Group would take place following this. Members will be informed of the date in due course.