

SHADOW FAMILY JUSTICE BOARD (SFJB) ADVISORY GROUP

WRITTEN UPDATE 6th APRIL 2020

In light of the current Covid-19 pandemic, it is not possible to hold a formal meeting of the Advisory Group at this time, nor to predict when such a meeting might be arranged. This paper is therefore to update Advisory Group members of developments since the last meeting on 4th November 2019. The minutes of the seventh meeting of the sFJB held on 10th October 2019 have been published and are available at the following link:

<https://judiciaryni.uk/publications/minutes-seventh-meeting-shadow-family-justice-board-held-10-october-2019>

One further meeting of the sFJB has taken place - this was the eighth meeting of the group and was held on 20th February 2020.

KEY PRIORITY AREAS - PROGRESS UPDATES

The developments in the six key priority areas are as follows:

1) Open Justice

➤ Journalist Accreditation and Reporting of Family Cases

The sFJB wrote to DOJ on 19th December 2019 to request that it consider taking forward substantively the legislative changes required to set aside section 12 of the Administration of Justice Act 1960 in order to progress the pilot beyond simple attendance of reporters in court. DOJ responded on 10th February 2020 to advise that its immediate priorities are to progress legislation to prevent the direct cross-examination of a victim of domestic abuse in family court proceedings; proposals for a single family court and potentially for the approval of minor settlements. DOJ requested the views of the sFJB on whether media access to family courts should be addressed ahead of a single family court. Members agreed that, while it would not take priority over other matters being progressed, they would welcome if possible, some priority being afforded to progressing at least the rule change that would enable the pilot scheme in the High Court to commence.

2) Problem-solving courts

➤ Family Drug and Alcohol Court

DOJ reported that Treatment plans have concluded in all cases within the programme. When last reported, three of the fourteen participating cases remain to be disposed by the court; of the concluded cases, eight children from three families have been able to remain in the family as a result of the programme. Other positive outcomes may emerge from the evaluation which is ongoing, and will inform next steps. A further update will be provided when the evaluation is available.

3) Single family tier system

DOJ has begun work on developing a consultation paper for Ministerial approval. They have been carrying out further research in respect of some of the issues highlighted by Lord Justice Gillen such as delay caused by current arrangements for transfer of cases between courts and an official is to visit Liverpool to find out more about how the Family Court is operating in England and Wales. The timing of any consultation is subject to consideration by the Minister of her priorities in relation to family justice.

4) Voice of the child and vulnerable adults

➤ Signs of Safety

The Signs of Safety implementation is being delivered within the context of a long-term, five year commitment with continuing implementation activity. The first two years of concentrated implementation concluded on 31st March 2020. Since implementation began approx. 2,200 children's services social workers have been trained to implement the model across the region. Approximately 260 multi-disciplinary partners have also availed of this training. A further 300 social work staff should be trained by the end of March 2020.

A meeting was held on 16th January 2020 with the Signs of Safety Implementation Officers, the NI Bar and NIGALA, following the 'Signs of Safety' awareness raising event for Barristers on the 27th November 2019. The Bar and Trusts have created an ongoing dialogue to consider issues pertaining to the 'Signs of Safety' Framework in cases brought to court, and extended an invite to the Law Society to attend the meeting of the group on 10th March 2020.

The Trusts are 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. A further presentation is to be delivered to the judiciary later in the year.

➤ Guidance and training

The Bar plans to introduce written guidance specific to the Bar on working with children and vulnerable adults. The Bar Education and Training Officer is also exploring basic awareness courses for the Bar which would address both family and criminal proceedings.

At the last meeting members discussed the issue of multi-disciplinary training, with a view to setting up a sub-committee to take forward work on a joint approach to training around vulnerable parties in family cases, and will consider similar initiatives being scoped for criminal business.

5) Divorce

No update. This area cannot be advanced further without legislative change which DOF advised is unlikely to be a priority during the current mandate.

6) Resolutions outside court

➤ DOH & DOJ Pilot Scheme

The DOJ has been continuing to work with the DOH to develop an action plan to support the early resolution of private family law disputes. Progress has been made with the development of a draft plan and educative animation. Discussions with the voluntary sector on the delivery of a pilot programme of information sessions for separating parents are continuing.

The DOJ hope that the proposed action plan and initial activities will shortly be subject to Ministerial consideration with options for launch considered thereafter.

KEY PRIORITY AREA REFRESH

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. Primary legislation will be required to place the Family Justice Board on a statutory footing and none of the four Bills in the current mandate provide for this, so it will continue in its current shadow mode for some time.

At the last meeting members of the sFJB Advisory Group were asked to consider refreshing the key priorities, and to submit suggestions as to what further areas should be prioritised for the sFJB to progress while it is constrained in shadow mode.

Having considered the suggestions received from both sFJB members and members of the Advisory Group, the sFJB has agreed the following approach:

- As **'Open Justice'** and **'Divorce'** cannot be advanced further without legislative change they are not in the power of the sFJB to progress and should be removed as priority areas for the coming year.
- **'Problem-solving courts'**, **'Single tier system'**, **'Voice of the child and vulnerable adults'**, and **'Resolutions outside court'** should be reconfirmed as ongoing priority areas.
- **'Public law'** and **'Private law'** should be formally recognised as new sFJB priority areas for the coming year.

OTHER AREAS - PROGRESS UPDATES

Public law system

➤ NIGALA and Overview of Article 56 Appointments

An approach has been agreed between the Assistant Directors and the Principal Practitioners for Court to ensure a regionally consistent approach to Article 56 appointments. It is important to ensure Trusts are applying the same thresholds, assessing existing risks and protective factors based on each child's unique circumstances. The Trusts will review the Article 56 appointments to quality assure the Trust Reports, review thresholds and time-scales and present an evaluation report to the next meeting of the sFJB.

The Chair of the sFJB 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. He recognised that this practice had been adopted due to significant pressure on resources. NIGALA are to reflect on the ruling which has provided a significant policy steer. The issue will be included on the agenda of the next sFJB meeting.

➤ Guidance on Instructing Experts

The reworked guidance document on the instruction of experts in Public Law Proceedings remains in draft and is to be considered in conjunction with the work of the sFJB working group investigating 'Delay' (see update on page 5).

➤ Expert witnesses consultation

On 13th March 2020 the DOJ launched a public consultation on a pilot scheme to give solicitors general authority to appoint and pay expert witnesses in certain legally aided family law cases in the FPC. The consultation can be viewed [here](#). Please note that the closing date for responses is **2pm on 8th May 2020**.

Private law proceedings

➤ Second Report of the Private Law Working Group

In 2018 the President of the Family Division in England & Wales invited Mr Justice Stephen Cobb to convene a Private Law Working Group (PrLWG) to review the approach taken to private disputes between parents with respect to the arrangements for their children's future welfare following a separation. In July 2019 the PrLWG published its First Report and invited responses during a consultation period which ran until the end of September. The purpose of the Second Report, which can be viewed [here](#), is to draw together the key themes that were highlighted during consultation and to describe how the Group's thoughts have developed as a result during the past 6 months. The sFJB will keep apprised of developments in other jurisdictions in considering future changes within NI.

Delays in Children Order Cases/Performance Monitoring

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

A sub-committee, chaired by Judge Kinney, has been established to investigate the increasing delay in public law Children Order proceedings. The group has met on 3 occasions and have agreed that the focus of the sub-committee would be best placed initially upon the following areas where progress may potentially be achieved:

- **Information management system**
- **Criminal investigations (e.g. non-accidental injury cases)**
- **Expert reports**

A working group has been established to explore the delays associated with criminal investigations, membership includes representatives of the legal profession, the PSNI and the HSCT.

The sub-committee has also discussed the prospect of reviewing the existing COAC Best Practice Guidance, with discussions centred upon case management steps. The sFJB confirmed the need for the proposed review of COAC guidance for both public and private law cases and DOJ and DoH representatives are to discuss how this might be taken forward in advance of the next meeting.

Members have also agreed to review a sample of cases at each tier spread across the Trust areas to take account of regional variations to identify the factors contributing to delay in each case.

Litigants in Person (LIP)

➤ LIP Reference Group

The LIP Reference Group has been in operation for a year and has now met four times, focusing largely on practical actions, such as improvements to the accessibility of information and the physical environment in court venues. The Group has also begun to examine the issue of McKenzie friends.

Members of the Reference Group are working with the University of Ulster to develop tools to assist LIP, which they then hope to test in court.

The DOJ 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 which was well attended and reported to be beneficial by members of the judiciary and legal profession.

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

DOJ reported that broad support for the proposals contained in the consultation was received and legislative provision to this effect has been included in the new Domestic Abuse and Family Proceedings Bill 2020 which was introduced to the Assembly on 31st March 2020. The Bill will create a new domestic abuse offence for Northern Ireland which will capture patterns of controlling and coercive behaviour, as well as physical abuse, against a partner, former partner or family member. The legislation will also provide greater protection to victims of domestic abuse by extending the prohibition on cross-examination in person, as well as automatic eligibility for consideration for special measures in criminal proceedings and prohibiting cross-examination in person in family proceedings in certain circumstances.

Any need for a Practice Direction to accompany the legislation will be considered when it comes into force.

BUSINESS CONTINUITY ARRANGEMENTS: COVID-19

Advisory Group members were updated by email on 2nd April on the business continuity arrangements implemented by the Lord Chief Justice following the Covid-19 restrictions announced by the Prime Minister.

The general guidance issued, along with the relevant business continuity forms and additional guidance on specific business areas, can be found on the JudiciaryNI website at the following link: <https://judiciaryni.uk/coronavirus-covid-19>. The most recent family guidance issued on 25th March can be found [here](#). These will be updated and re-issued as and when required.

Next Meeting

It is not feasible to arrange a meeting at this time, but should members wish to clarify any matter in this update or raise an issue for consideration at the next meeting, they are encouraged to contact the secretariat by email.