

**SHADOW FAMILY JUSTICE BOARD (sFJB)**

**WRITTEN UPDATE 3rd July 2020**

The Chair, Mr Justice O'Hara, has issued the following note for the attention of members:

*"As members may be aware I am stepping down as the Chair of the shadow Family Justice Board, and I am very pleased to announce that the new Senior Family Judge, Mrs Justice Keegan, has been appointed as my successor. I would like to express my appreciation to all members for their contributions to the work of the shadow Board over the past two and a half years and I am confident that progress will continue to be made under the very capable direction of Mrs Justice Keegan. - JO'H"*

**Introduction**

In light of the current COVID-19 pandemic, it has been decided not to hold a formal meeting of the sFJB at this time. The next meeting has been provisionally scheduled for **Thursday 24<sup>th</sup> September at 4pm** and will be **chaired by Mrs Justice Keegan via Webex**. The purpose of this paper is to update members of developments since the last meeting on 20<sup>th</sup> February 2020, and the Chair is grateful to members for providing details in this regard. **Members are asked to confirm that the draft minutes of the last meeting can be noted as agreed and published.**

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**PRIORITY AREAS**

**Problem-solving courts**

- Family Drug and Alcohol Court (FDAC)

The FDAC evaluation has been delayed by the impact of the COVID-19 pandemic. DoJ hope to have finalised the evaluation by the early summer, however this is dependent on external support. **The evaluation will inform next steps.**

**Single tier system**

DoJ has begun work on developing a consultation paper for Ministerial approval. The timing of any consultation is subject to consideration by the Minister of her priorities in relation to family justice.

## Voice of the child and vulnerable adults

### ➤ Signs of Safety

The HSC has been focused on the management of the public health response to the COVID-19 pandemic. Trust colleagues have continued to implement Signs of Safety on the basis of the training previously provided. Plans are being actively taken forward now to refocus the work on the implementation of Signs of Safety in 2020/21. These plans will include meetings between the Signs of Safety Implementation Officers, the NI Bar, Law Society and NIGALA going forward.

### ➤ Guidance and training

At the last sFJB meeting the work of 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), was discussed and members considered that it would be beneficial to establish whether guidance prepared by the group for the criminal courts on dealing with vulnerable witnesses could be translated to the family courts. The Bar of NI is represented in the group by its Education and Training Officer, Ms Gillian McGaughey. The first meeting of the group took place on 5<sup>th</sup> March 2020 and the potential for the inclusion of family justice within the sphere of the group's work has been raised. It was noted that this was a good opportunity to prevent duplication of work and that it would be of assistance to look at both areas. **Peter Reynolds, CEO of NIGALA, has accepted an invitation to join the group and will provide a direct link between the group and the sFJB.**

The group is continuing to meet and undertake its work during the current public health situation and progress is being made in the inclusion of Family Justice within the development of training resources by this group. The group has now embarked on a training needs analysis exercise to identify where resources can be shared. The Law Society has also joined the group and it has been agreed that the professional bodies would collaborate in the production of resources in areas such as family justice where appropriate.

## Resolutions outside court

### ➤ DoH & DoJ Pilot Scheme

DoJ has been continuing to work with 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, and while this work has been impeded by the pandemic it is hoped that it will be **launched in the early autumn.**

## Public law system

### ➤ NIGALA and Overview of Article 56 Appointments

As confirmed at the last meeting of the sFJB, 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 Principal Practitioners for Court will review the Article 56 appointments to quality assure the Trust Reports and review thresholds and time-scales.

A **report** based on the work of the Principal Practitioners was due to be presented at a meeting of the Assistant Director's Forum on 1<sup>st</sup> May 2020, however this has been **delayed due to the current pandemic**.

### ➤ NIGALA Workflow update

A 'Workflow Management' report for NIGALA has been provided covering the period up to June 2020. The report outlines how guardians are currently operating at full capacity and while NIGALA has successfully managed to effectively remove a significant backlog of cases, a resumption of Trust and Court business will invariably place additional pressures on the system as a whole.

A 'Post Covid-19' table has also been provided which outlines the planning scenarios/assumptions that NIGALA are currently operating in compliance with Government directives on home working and social distancing. The table also outlines the revised expectations of the Guardian role both for the here and now and moving forward to the '*recovery phase*'.

### ➤ Sir John Gillen speech

At the last meeting the speech delivered by Sir John Gillen at the NIGALA conference on 14<sup>th</sup> February 2020 was circulated to members. **The recommendations made concerning judicial training have been fed back to the Judicial Studies Board.**

Sir John also recommended that the Family Justice Board carry out some research into how often children are being interviewed by judges. DoJ have since advised that they are unable to assist with the provision of data in this regard and that previous engagement in respect of the proposed NSPCC pilot to extend the Young Witness Service to the family courts was limited to obtaining an anecdotal sense from the judiciary as **information on interviews is not routinely collected**.

➤ Guidance on Instructing Experts

In response to the COVID-19 pandemic it was agreed on 31<sup>st</sup> March 2020 by the representatives of the Bar and NIGALA to **defer** any gathering of people from the original Article 56 sub-group.

➤ DoJ expert witness consultation

The consultation exercise on a proposal for a pilot allowing experts to be appointed without prior authority for legal aid in public law Children Order cases in the Family Proceedings Court opened on 13<sup>th</sup> March 2020 and closed on 8<sup>th</sup> May 2020. A link to the consultation document was circulated to members. Consultation responses are currently being analysed and a post-consultation report is being prepared. This will be published on the DOJ's website and shared with the sFJB in due course. **The DoJ are now working towards a launch of the pilot scheme in the Autumn.**

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

The work on implementing the recommendations of the Public Law Working Group Report, is currently on hold due to the current hiatus. sFJB will keep a watching brief on developments and **table as an agenda item for discussion in due course**. The interim report of the group is available [here](#).

### Private law proceedings

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

In 2019 the PrLWG consulted on its First Report on the approach taken to private disputes between parents with respect to the arrangements for their children's future welfare following a separation. Their Second Report (which can be viewed [here](#)), was published on 2 April 2020, draws together the key themes that were highlighted during consultation and describes how the Group's thoughts have developed as a result. The sFJB will keep apprised of developments in considering future changes within NI, and **table as an agenda item for discussion in due course**.

➤ Overhaul of family courts in E&W to protect domestic abuse victims

On 25<sup>th</sup> June 2020 the government announced a major overhaul of the family courts to afford greater protections to the survivors of domestic abuse and their children. The announcement can be viewed in full [here](#). The following is an extract from the announcement:

*"Sweeping reforms will see more victims of domestic abuse given access to separate building entrances and waiting rooms as well as protective screens to shield them from their alleged abuser in court.*

*Ministers will also make it easier for judges to issue barring orders which prevent abusive ex-partners from repeatedly dragging their victims back to court – which can be used as a form of continuing domestic abuse.*

*The move comes after an expert-led review into how the family courts handle domestic abuse and other serious offences raised concerns that victims and children were being put at unnecessary risk.”*

The reforms include **‘Integrated Domestic Abuse Court pilots’**. The pilots will explore two approaches:

- “1. A ‘one family one judge’ approach in which certain concurrent family and criminal proceedings involving domestic abuse are heard by the same cross-ticketed judge, with the aim of reducing the need for victims to re-tell their stories and promoting a more joined up approach to the handling of such cases between the jurisdictions.*
- 2. An ‘investigative’ approach to the family courts. This will explore ways to move away from the current ‘adversarial’ system to adopt the three-phase approach recommended by the panel.”*

The report from the panel of independent experts on ‘Assessing the Risk of Harm to Children and Parents in Private Law Children’s Cases’ can be viewed [here](#) alongside the Implementation Plan published by the Ministry of Justice in response to the report’s recommendations.

➤ [Introduction of Domestic Abuse and Family Proceedings Bill 2020 in Northern Ireland](#)

The Minister for Justice introduced the above bill in the Northern Ireland Assembly on 31<sup>st</sup> March 2020. In broad outline the bill, which is accessible [here](#) (and the Explanatory Memorandum may be accessed [here](#)), is intended to legislate for:

1. the creation of a new offence of abusive behaviour enabling a range of domestic abuse incidents which take place over a period of time to be prosecuted as a single course of behaviour and also ensuring that a course of behaviour of entirely non-physical abuse of a person’s partner/connected person is criminalised (Part 1, Chapter 1);
2. aggravation as to domestic abuse for offences other than the above domestic abuse offence (Part 1, Chapter 2);
3. reforms aimed at preventing an accused person from using the processes of criminal justice to exert further control and influence over their partner/connected person – this includes prohibiting cross-examination of

a complainant in person and automatic eligibility for special measures (Part 1, Chapter 3); and,

4. the prohibition in family proceedings of cross-examination in person by a party who has been convicted of, given a caution for, or is charged with a specified offence, of a witness who is the victim, or alleged victim, of that offence; and by a party against whom an on-notice injunctive order is in force for the protection of a witness (Part 2).

The Minister moved the second stage of the bill on 28<sup>th</sup> April 2020 and it now stands referred to the Committee for Justice.

**This will be tabled as an agenda item of discussion at the next meeting.**

**The sFJB will revisit the need for a supporting Practice Direction for family proceedings in due course once the legislative changes have been made.**

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## OTHER AREAS

### Open Justice

- Media access to family courts pilot scheme

As agreed at the last meeting, a response issued 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.

**The DoJ hope to be able to produce a draft paper for the sFJB in the Autumn on increased media access.** However actual reporting of proceedings is constrained by primary legislation and DOJ have advised that there is **no prospect of primary legislative amendments this Assembly mandate.**

- Transparency Review update

The President of the Family Division (E&W) is undertaking a review of the current arrangements which regulate access by journalists and the public to, and the reporting of, information concerning proceedings in the Family Court ([‘the Transparency Review’](#)). The call for evidence has now closed. The Review panel plan to review each submission before holding oral sessions in June and July. The President expects to be in a position to present a **Final Report including recommendations and any draft guidance in the summer**, which will be circulated to members for consideration.

## Delays in Children Order Cases/Performance Monitoring

### ➤ Review of the COAC Best Practice Guidance

Initial discussions scheduled in March between DoJ and DoH regarding how a review of the COAC Guidance might be progressed unfortunately had to be postponed because of COVID-19 related pressures in DoH. **Discussions will be revisited** in the summer or early autumn as the opportunity arises when the pressures created by the pandemic begin to ease.

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

One further meeting of the sub-committee has taken place on 9<sup>th</sup> March 2020. The draft minutes of this meeting have been made available. Subsequent meetings of both the sub-committee and its working group involving the PSNI have been **postponed** due to the pandemic.

## COVID-19

### ➤ Business Continuity

Members were updated by email on 2<sup>nd</sup> April 2020 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> . These are updated and re-issued as and when required.

Since the start of the pandemic, court business has been consolidated into five court hubs at:

- The Royal Courts of Justice;
- Laganside Courts (also dealing with Ballymena, Antrim, Ards and Downpatrick);
- Lisburn (also dealing with Craigavon, Armagh, Newry and Banbridge);
- Dungannon (also dealing with Omagh, Enniskillen and Strabane); and
- Londonderry (also dealing with Magherafelt, Limavady and Coleraine).

The following matters have continued to be progressed throughout the pandemic by way of a court hearing (the form of which is determined by the judge) or on the papers where possible:

1. **Urgent** Matters, which typically involve the immediate liberty, health, safety and wellbeing of individuals such as Non-molestation Orders; Applications under the Children (NI) Order 1995 such as Care Orders, Prohibited Steps



Orders, Emergency Protection Orders and Secure Accommodation Orders; Declaratory judgments in patients' cases; Child abduction.

2. **Agreed** matters or where **approval** is required - where parties have agreed a way forward in their case and are seeking an order from the court or approval from the court.

**Interim arrangements** have been put in place to deal with applications for non-molestation orders, Interim Care (ICO) and Interim Supervision Orders (ISO) and contact orders.

The Lord Chief Justice has also initiated a programme of work to **incrementally recover court business** informed by Public Health Guidance, with Judges undertaking administrative reviews of outstanding cases, using information provided collaboratively by the parties, to prioritise cases for hearing. Reviews may result in the judiciary issuing Directions, requesting further information, listing the case for review, adjourning it or listing it for a future hearing. Where the judge determines that a review or other hearing is required it will generally be undertaken remotely.

**To date:**

- ▶ The **High Court Judge** has reviewed all Children Order cases adjourned due covid-10, and will continue to review **cases** listed and arrange hearings during the summer recess as required;
- ▶ The **Care & Protection Master** has conducted an extensive Administrative Review of all Children cases that were listed for Hearing or Review between 23<sup>rd</sup> March 2020 – 1<sup>st</sup> June 2020 and Directions Orders have issued. These cases shall be further reviewed in accordance with the Directions Orders. All other cases, including new cases are now being processed by the respective Children and Patient Offices at a speed commensurate with the skeleton staff available;
- ▶ **Family Care Courts** – judges for each FCC continue to undertake administrative reviews of outstanding and list cases for (remote) hearing as required.
- ▶ Judges are undertaking administrative reviews of **Family Proceedings Court** cases in **Ards and Lisburn**. Processes will be reviewed with a view to extending to other areas (to include Londonderry and Belfast over the summer)
- ▶ Remote hearings have been arranged for all **Undefended Divorces** which were ready for hearing, and this process will continue in the new term;
- ▶ Applications for **decree absolutes** are being processed.
- ▶ The **Matrimonial Masters** continue to operate daily lists remotely :
  - **Financial Dispute Resolution** will be progressed where solicitors agree that the case is ready for FDR hearing.
  - **Maintenance pending suit applications** lodged in accordance with guidance will be dealt with on foot of written submissions emailed to the court, and a decision will be issued to all parties.



- **New ancillary relief applications** will be allocated a date for First Directions by the Master providing all conditions set out in guidance have been met.

At a meeting with the profession on 29<sup>th</sup> June, the Lord Chief Justice advised that the structured reviews will continue where notified, but **parties are also encouraged to lodge forms in outstanding cases, urgent or otherwise**. Judges /Masters will then determine whether it is appropriate to facilitate hearings or make directions on the papers.

**Recovery plans will continue to be developed in conjunction with NICTS and the family practitioners, based on the collaborative completion of forms lodged by the profession which focus on meaningful engagement between the parties, narrowing the issues to be determined by the court, with practical proposals for the format of hearings which optimise fairness and integrity of the proceedings.**

➤ Remote access courts

In developing contingency processes, the family judges in Northern Ireland have been cognisant of helpful findings arising from the Nuffield Family Justice Observatory (NFJO) study on the effectiveness of remote hearings used in the family justice system in E&W since the COVID-19 crisis began, together with Sir Andrew McFarlane's observations on the report, which have been considered in his paper 'The Road Ahead' for the Family Court in England and Wales published on 9<sup>th</sup> June 2020 (which can be viewed [here](#)).

➤ Further recent matters of interest

Members may also find the following reports and articles of interest:

- [Contact during lockdown: How are children and their birth families keeping in touch?](#)
- [The effects of digital contact on children's well-being: evidence from public and private law contexts](#)
- [Speech by Mr Justice MacDonald, Deputy Head of International Family Justice for England and Wales, at the Academy of Family Lawyers Webinar on 21<sup>st</sup> May 2020.](#)

## **Advisory Group**

The third meeting of the Advisory Group has been postponed due to the pandemic. An update paper was circulated to members on 7<sup>th</sup> April 2020.

**Next Meeting**

**Thursday 24<sup>th</sup> September at 4pm by Webex.**