

SHADOW FAMILY JUSTICE BOARD

Minutes of the Eleventh Meeting of the shadow Family Justice Board (sFJB) held on 17th May 2021 at 4.15pm via WebEx video conferencing.

Attendees: Mrs Justice Keegan (Chair)
District Judge Logue
Master Sweeney
Bronagh O'Reilly (DoJ)
Mark Goodfellow (NICTS)
Eilis McDaniel (DoH)
Paul Andrews (LSA)
Tom Cassidy (HSCT)
Brendan Whittle (HSCB)
Dawn Shaw (NIGALA)
Suzanne Simpson QC (Family Bar Association)
Suzanne Rice (Law Society)
Mandy Kilpatrick (OLCJ)

Secretariat: Kim Elliott (OLCJ)
Katharine McQuade (OLCJ)

In attendance: Sinead Mulhern (LIP Reference Group, Chair)

1. The Chair welcomed everyone to the meeting and thanked members for their attendance. She extended a warm welcome to three new members: Mark Goodfellow (NICTS), Dawn Shaw (NIGALA) and Brendan Whittle (HSCB), and recorded her thanks to outgoing members Peter Luney (NICTS), Peter Reynolds (NIGALA), Marie Roulston (HSCB) and Stephen Martin (DoJ) for their contributions to the group. She also welcomed Sinead Mulhern who was in attendance to update members on the work of the Litigant in Person Reference Group.

Apologies

2. Apologies were noted from District Judge Collins, Michael Foster (DoF) and Deirdre Mahon (HSCT). Apologies were also received from DJ(MC) Prytherch and Judge Kinney after the meeting.

Sinead Mulhern - LIP Reference Group, Chair (*work update*)

3. The Chair invited Ms Mulhern to address members on the work of the LIP Reference Group ("the group"). Ms Mulhern thanked the sFJB for the opportunity to attend and engage with the shadow Board and provided members with a brief overview of the group's background and remit. The focus of the group is twofold: (i) looking at the information and support available to LIP and identifying gaps/suggesting improvements; (ii) relationship building.

Ms Mulhern explained that the composition of the group is unique due to the strong representation of LIP – eight of the 16 members are LIP and eight are from other stakeholder groups. The first meeting of the group was held in February 2019 and the eighth meeting is due to be convened in June 2021. Upon review in September 2020 the Terms of Reference for the group were revised to take account of developments surrounding remote justice.

4. Ms Mulhern informed members that the work of the group can be distilled into three of ten key themes: identifying practical steps to make the court easier to navigate for LIP; finding ways of building a greater mutual understanding, and providing an effective vehicle in allowing LIP to be heard. Progress to date has included visits to courthouses to identify difficulties with navigation and suggest possible solutions to NICTS. The group has also produced a report to NICTS outlining suggestions regarding digitisation to assist LIP. In respect of building better relationships with stakeholders, the DoJ sponsors of the 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 10 - 11 February 2020 which was attended by around 105 practitioners and reported to be beneficial. Ms Mulhern said that the group are seeking to further engage with NICTS, particularly in respect of the modernisation programme, in order to embed the voice of LIP in the court system. A member of the group has also been nominated to the NICTS Stakeholder Advisory Group. Ms Mulhern also reported that Ulster University, in partnership with DoJ, is developing a new web-site called ‘Litigant Voice’ which will include updates of the group’s meetings and a range of other information resources for LIP. The new web-site will be launched in the coming months.
5. Ms Mulhern confirmed that the LIP Reference Group would be happy to provide feedback on any matters which the sFJB wished to refer to it or provide regular progress updates. The Chair thanked Ms Mulhern for the helpful presentation and gave an assurance that the sFJB are alive to the input of the reference group and to the debate as to how court practice affects outcomes particularly for children. She acknowledged the importance of ensuring that access to justice is fair and equitable for all. The Chair invited Ms Mulhern to liaise with the secretariat regarding any issues which the group might wish to bring to the sFJB’s attention.

Minutes of the sFJB Meeting on 8th February 2021

6. The minutes of the last meeting were agreed and should be published.

Covid-19: Business Continuity and Recovery

7. Mr Goodfellow reported that the volume of cases receipted in the family court was now similar to pre-Covid levels and disposals were around 15% higher. He

also informed members that the Committee for Justice had expressed an interest in the Ulster University Report on the Impact of Covid-19 on Family Courts in NI, discussed at the previous sFJB meeting, and NICTS had been afforded the opportunity to brief the Committee on the mitigation measures in place and raise awareness of the work being progressed. He advised that a review of the potential to increase consultation spaces across the court estate was currently underway, while facilities in ICC could be still pre-booked to the end of June. Mr Goodfellow also confirmed that a new Chief Modernisation Officer has been appointed and that this will accelerate the modernisation agenda - Karen Ward will take up post on 24 May 2021.

8. Mrs Kilpatrick re-iterated the focus on recovery of in-person courts, and said that updated information on court business continuity arrangements, and guidance in regard to attendance at court, is available on the Judiciary NI website. Ms Rice advised that solicitor firms were beginning to look at future business models and whether there would be a continuing role for remote hearings going forward, and would appreciate any guidance in this respect. Mrs Kilpatrick explained that the situation regarding Covid-19 is being continually monitored and that the Lord Chief Justice is regularly liaising with his counterparts in other UK jurisdictions, and highlighted that some of the current measures were introduced on an emergency basis. Mr Goodfellow agreed that NI would continue to adopt a cautious approach. It is anticipated that hybrid hearings will continue to be a feature of court business for some time, as will case management on the papers where these appeared to be working to the judiciary, who would be guided by the profession in developing the future systems.
9. The Chair highlighted the family court's prior experience of utilising video-links to facilitate parties outside of the jurisdiction and considered that it would remain open to the use of technology going forward. She suggested that a hybrid model may prove convenient and cost effective for solicitors based outside of Belfast and considered that the processes introduced due to covid to narrow issues before the court, combined with use of better and quicker technology demonstrated benefits which will now be part of the conversation going forward.
10. The Chair referred to the e-bundles pilot commissioned by the Judicial Digitalisation Steering Group (JDSG) and informed members that she had presided over the first hearing of the pilot which ran before the Family Division of the High Court on 14th April. Initial feedback was positive and the Chair said that she found the use of the e-bundle in the case to be both efficient and effective. She commended the work of the Bar and court staff in facilitating the hearing. The intention is for lessons learned to be applied to further pilot hearings in other Divisions of the High Court, and across the County Courts. The Chair was also keen that further pilot cases in the Family Division should be sought.

PROBLEM-SOLVING COURTS

Family Drug and Alcohol Court (FDAC)

11. Ms O'Reilly explained that the evaluation is being developed with pro bono support from academics at QUB. Unfortunately progress has continued to be impeded by pressures on that academic resource caused by the pandemic. DoJ is continuing to liaise with QUB to try and bring the evaluation to a conclusion and will share information emerging as soon as possible.

RESOLUTIONS OUTSIDE COURT

DoH & DoJ Private Family Law Early Resolution Action Plan

12. Ms O'Reilly reported that the joint DoJ/DoH Early Resolution Action Plan ("the Plan") was considered by the Committee for Justice on 15 April and should shortly be considered by the Committee for Health. The Plan is envisaged as an evolutionary exercise, with early actions informing decisions on how the Departments might best support separating parents in the future. It is hoped to launch a number of information tools for parents alongside the plan to highlight alternative resolution options, and help those who do need to come to Court to resolve their issues more quickly.

PUBLIC LAW SYSTEM

NIGALA Subject Access Request (SAR) Protocol

13. Ms Shaw advised that an initial draft of a SAR Protocol document was being considered within NIGALA and she did not anticipate any changes affecting the Court. The Chair said that the matter would be included on the agenda of the next meeting and it would be helpful if the completed protocol could be forwarded to the secretariat when available. Ms Shaw confirmed it would also be made available on the NIGALA website for transparency.

Action: Item to be included on the agenda of the next meeting. NIGALA SAR Protocol to be forwarded to secretariat when available.

Guardian Ad Litem (GAL) & Social Worker resources

14. The Chair explained that she had requested that this issue be added to the agenda as serious pressures due to social worker shortages in Newtownabbey had been brought to her attention. She considered it likely that the problem may be replicated across other regions and court tiers and that possible contributory factors might be Covid-19 vulnerabilities, recruitment issues and difficulties regarding child-care arrangements. She expressed her concern about putting undue pressure on the Court Children's Officers or front line social workers and emphasised the court's respect for the services they provide. The Chair said she had tried to ameliorate the pressure in the interim by permitting shorter written reports to update the court where it was seized of the details, and a full written

report repeating this detail was unnecessary. On occasion, oral updates may also be acceptable where matters were urgent. Mr Cassidy said that while he could not comment specifically on Newtownabbey he could advise that there are currently around 150 vacancies across the five Trusts and that the situation is being examined by the Trust Executive Directors. He said that the Trusts were anxious to facilitate the frontline services to the courts and avoid any unnecessary delay, to this end the virtual engagement with the courts introduced during the pandemic was helpful and the indication that the provision of oral reports would be acceptable to the court was most welcome.

15. Ms McDaniel advised that HSCB and DoH were both alive to the issue of social worker shortages and the concern of the courts. She explained that the volume of paperwork associated with children's services was notably greater than that connected to adult services and feared this led to social workers leaving, or not joining, children's services. Mr Whittle confirmed that there had been particular pressure in recent years in recruitment and retention of children's services, and DoH were developing medium term proposals from their recent workforce review. He said that both he and Mr Cassidy would feed back the Chair's comments regarding the provision of update reports in order to dispel the myth that lengthy written reports were required by the court. The Chair suggested that a multi-disciplinary conference might be useful to engage social workers, energise support for children's services, dispel fears and discuss the expectations of the court.

Action: DoH/HSCB/NIGALA to consider the possibility of a multi-disciplinary conference, as suggested by the Chair.

16. Ms Shaw said that Guardians Ad Litem (GALs) are facing similar pressures to social workers, and have engaged some self-employed GALs to assist with reviewing unallocated cases by hearing date. She explained that they are a finite resource and are operating within a fixed budget. The Chair advised that her position regarding written reports was also applicable to GALs and their focus should be on assisting the court to get to the core issue as it affects the child, for which a full detailed template is not always required.

DoJ Expert Witnesses pilot scheme

17. Ms O'Reilly informed members that the DoJ Expert Witness pilot launched on 25 January 2021 for the engagement of expert witnesses for cases in the Family Proceedings Courts (FPC) under a general authority for legal aid funding. To the end of March the General Authority (GA) has been used 16 times, and DoJ are working with the Legal Services Agency (LSA) to improve communication with the profession as some solicitors are unaware of the GA or how to apply using the LAMS system. While still early days, the pilot is beginning to show some positive results, and as it is utilised by more practitioners evidence gathered will inform future development of the scheme. Mr Andrews confirmed that any

issues arising can be addressed through the LSA's monthly key messages to practitioners.

18. The Chair welcomed the initiative and hoped it would prove effective in reducing delay in achieving the best outcome for the child. Ms Simpson considered that a balancing exercise was required to ensure both instructions to the expert and the final reports were proportionate but also comprehensive. Ms Rice noted that the scheme is curtailed to the FPC as cases at this tier should be less complex. Both members welcomed the positive reports of the scheme's progress to date, and agreed to help promote it within their profession.

Action: DoJ/LSA to address improving communication with the profession. Ms Simpson and Ms Rice to help promote the scheme within the profession.

Interim Care Orders (ICOs)

19. Ms McDaniel spoke to the paper on ICOs which had been circulated to members in advance. DoH are seeking the views of the sFJB on whether to proceed with a focused consultation on revising timescales for ICOs. Recommendation FJ77 of the Family Justice Report suggests amending Article 57 of the Children Order stating: *"Any order made by a family court to remain in force until the conclusion of the proceedings, or until further order."* Ms McDaniel explained that the views expressed through the Access to Justice and Family Justice reviews and also the Care Proceedings Pilot were mixed, however the majority were supportive of a legislative solution to address FJ77. In practice this would have the effect of removing the requirement for the ICO to be reviewed after the initial eight weeks and four weeks thereafter, and felt this would help address some of the delay present and exacerbated due to the pandemic. She informed members that following the 2011 Family Justice Review (England & Wales) a statutory time limit of 26 weeks was introduced for the disposal of care proceedings, and that interim orders, once granted, now last until the disposal of proceedings. Ms McDaniel sought the views of the sFJB on the various options outlined in the paper and asked whether it would be supportive of a targeted consultation on the options. The Chair advised that the sFJB had previously agreed that it should not comment on consultations unless a consolidated view could be agreed. Members acknowledged their previous conflicting views and considered that it would be difficult to reach a consolidated view on this matter but were content that the sFJB should note that there was to be a targeted consultation to which they could respond from the perspective of their organisation.

Action: DoH targeted consultation on revising timescales for ICOs to issue to individual sFJB representatives for consideration.

PRIVATE LAW SYSTEM

Introduction of Domestic Abuse and Civil Proceedings Act 2021 in Northern Ireland

20. Ms O'Reilly informed members that the [Domestic Abuse and Civil Proceedings Act 2021](#) was enacted in March 2021. Further work will be required by DoJ to give effect to the provisions for special measures to protect victims of domestic abuse in civil and family proceedings. This will include considering the need to prescribe offences, what other evidence may trigger prohibitions, and developing fees and guidance for the legal profession. DoJ will also be liaising with the secretary of the Rules Committees regarding the drafting and consideration of the required court rules.

DELAYS IN CHILDREN ORDER CASES/ PERFORMANCE MONITORING

Review of the COAC Best Practice Guidance

21. The Chair said she was very keen that the COAC Guidance be updated as soon as possible. Mr Goodfellow said that, prior to his departure, Peter Luney had developed draft Terms of Reference (TOR) for the proposed working group. He suggested that he liaise with Ms McDaniel and Ms O'Reilly regarding the draft TOR and to explore the challenges of funding a review of the Guidance. Ms McDaniel explained that there would be two stages to the project: (i) identification of the changes required; (ii) appointing an appropriate individual(s) to action the required changes, but advised that there was not yet a timeframe in place. Members stated they were committed to carrying out the review effectively.

Action: Update on the details and timing of the review to be provided at the next meeting.

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

22. The Chair considered that disclosure was one of the principle causes of delay and particularly impacted upon cases where non-accidental injuries or non-molestation orders were involved. She explained that she had therefore begun to invite a solicitor from the PSNI Legal Branch to case reviews in order to expedite the process of discovery. The Chair suggested that it may be helpful if the joint protocol for concurrent care and criminal proceedings could be re-energised, to fine-tune the detail in the first instance, before making it consistent common practice in all tiers. Ms Rice reported that the sub-committee's working group dealing with criminal investigations had recently met on 29 April and that a draft template for requesting information from the PSNI is now being further refined by members. A review of the joint protocol has also been discussed by the working group. Ms Rice said that the group's work has gained momentum and it is due to meet again on 10 June. She confirmed that a representative from social

services participates in the working group. The Chair welcomed the progress being made in this area, and asked to be kept informed.

Action: Updates on the work of the sub-committee and its working groups on criminal investigations and disclosure to be provided at the next meeting.

OPEN JUSTICE

23. The Chair highlighted concerns that family law goes on 'in the shadows', noting it was a shame that family law is not understood in the public arena and she felt that a move towards greater transparency would be in the public interest. The Chair accepted there are legislative issues to be addressed in NI, but would keep abreast of the ongoing Transparency Review and developments in England & Wales and would like members to consider the final report which would be circulated when issued to try to find some middle ground.

Action: Secretariat to circulate the final report of the Transparency Review when issued.

ANY OTHER BUSINESS

24. No other business was raised by members.

NEXT MEETING

25. The date of the next meeting was agreed as **Monday 18th October 2021 at 4.15pm.**