

SHADOW FAMILY JUSTICE BOARD

Minutes of the Fifth Meeting of the shadow Family Justice Board held on 23 January, 2019 at 4.15 pm in Judges' Assembly Room, Royal Courts of Justice, Belfast

Attendees: Mr Justice O'Hara (Chairman)
His Honour Judge Kinney
Master Sweeney
District Judge Gilpin
District Judge (MC) Prytherch
Jane Maguire (DoJ)
Paul Andrews (Legal Services Agency)
Michael Foster (DoF)
Eilis McDaniel (DoH)
Marie Roulston (HSCB)
Peter Reynolds (NIGALA)
Louise Murphy BL (Family Bar Association)
Kelly Breen (Law Society)
Mandy Kilpatrick (PPS to the Lord Chief Justice)
Kim Elliott (OLCJ)

Secretariat: Katharine McQuade (OLCJ)

1. The Chairman welcomed everyone to the meeting and thanked the members for their attendance. He confirmed that John Growcott had written to him to advise that he would be retiring soon and therefore would be stepping down from the shadow Board. The Chairman recorded his thanks for Mr Growcott's work on the Children Order Advisory Committee and his contribution to the shadow Board and wished him well in his retirement. It was noted that Brendan Whittle had been nominated to replace Mr Growcott but that Mr Whittle had since accepted a new role and Deirdre Mahon would replace him as representative of the Association of the Executive Directors of Social Work on the shadow Board.

Apologies

2. Apologies were noted from Peter Luney and Brendan Whittle.

Minutes of the Meeting of 16 October 2018

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

Open Justice

4. The Chairman summarised the progress that had been made in this area. He advised that when he had met with representatives of the press in June 2018 it had been agreed that a trial period of access to hearings in the Family Division would be arranged. He confirmed that a Proof of Concept phase had commenced on 26 November 2018 and was still ongoing. This initial phase has involved two nominated journalists, Alan Erwin (court reporter) and Tara Mills (BBC), being permitted to attend hearings in the Family Division, however they are not permitted to report at this stage. The Chairman advised that both journalists would be keen to report on the types of cases that they had witnessed but these cases were unlikely to lend themselves to daily reporting due to the difficulties presented by anonymisation issues.
5. The Chairman informed members that, in principle, the idea of media access to the family courts is no longer up for debate. The question to be addressed is how this access can be managed and restricted to accredited journalists who will ensure the necessary safeguards are upheld. He referred to the paper presented by OLCJ and noted that in England and Wales the only significant development that has been made concerns the publication of family judgments. The Chairman advised members that more groundwork is required before it will be possible to move beyond the trial period and sanction actual reporting. He suggested that it would be useful to form a sub-committee to iron out the issues surrounding how the pilot should be progressed and identify protocols to be put in place to control its operation. He also suggested that it might be useful for the sub-committee to engage with the NI Editors Liaison Group to discuss the issue of accreditation.

Action: Sub-committee to be formed consisting of the Chairman, representatives from the Bar, the Law Society, NICTS and OLCJ.

Problem-solving courts

Family Drug and Alcohol Court (FDAC)

6. Ms Maguire spoke to the update paper provided by DoJ. She advised members that an evaluation of the programme is expected to be completed in the Spring and the potential for further funding is being explored. She confirmed that 14 families have been invited to participate since the programme commenced in December 2017 and that it was felt that it would be useful to explore the initiative further with several more families. The Chairman invited Ms Maguire to provide a further update regarding funding at the next meeting of the shadow Board in June.

Action: DoJ to provide an update on the FDAC programme at the next meeting.

Domestic Violence Perpetrators Programme

7. Mrs Kilpatrick advised that the uptake for this pilot on the criminal side has been lower than anticipated and that DoJ are continuing to work with partners to review the operation of the pilot in order to consider, and address, participant numbers. Work has also been undertaken in conjunction with the Western Health Trust to address concerning behaviour prior to a criminal justice intervention.
8. Ms Murphy commented that in the family courts arena, domestic violence programmes are more difficult to access than in the criminal arena. She advised that family practitioners will frequently be dealing with parties without relevant criminal convictions, therefore the treatment programmes available in the criminal sphere will not be accessible. It was queried whether any publicly funded programmes are available. Ms Murphy offered to gather information on the programmes she is aware of and establish where they are sourced from.

Action: Ms Murphy to gather information on domestic violence programmes available in the family courts arena.

Single tier system

9. The Chairman noted that the introduction of a single tier system required legislative change to create a single family court, with the jurisdiction of the High Court preserved only for the most complex or legally sensitive cases. He advised that in the interim administrative processes have been implemented to allow cases to be transferred more quickly. Judge Kinney confirmed that anecdotally this appeared to be working well and that the transferring judge will contact the receiving judge to alert them to the transfer of a case to ensure early hearing at the higher tier. He also described the work that is being progressed to consider more effective case management within several family hearing centres aligned with health and social care trust boundaries.

Voice of the child and vulnerable adults

Signs of Safety approach to child protection briefing

10. The Chairman confirmed that a Family Justice training event was arranged for 21 March 2019 and that the presentation on 'Signs of Safety' will be shared at this event. He also confirmed that the Safeguarding Board for NI (SBNI)

have been invited to attend and share their experiences. Mr Reynolds indicated that NIGALA will be involved with the Signs of Safety presentation and is keen to explore it from a practitioner perspective. He undertook to contact the Chairman with a firm proposal of what the NIGALA involvement would look like.

11. Ms Breen and Ms Murphy both confirmed that Signs of Safety featured on the CPD agenda for the Law Society and the Bar.

NIGALA and Overview of Article 56 Appointments

12. Mr Reynolds advised that there had been difficulty in identifying a date for the sub-group to meet. He hoped that a date would be agreed in the near future.

Guidance and training for legal profession

13. Ms Murphy informed members that the Bar intends to liaise with the Advocacy Training Board in respect of this training. Ms Breen advised that it would be a topic at the upcoming Four Jurisdictions Family Law Conference and would also be on the agenda of a CPD event in the autumn.

Registered Intermediaries (RIs)

14. The Chairman noted that there had previously been discussion surrounding the use of RIs in the criminal courts and whether they could be transferred to the family courts. Ms Maguire advised that work in this area had been on hold following the Board's previous discussion but the use of RIs in family courts had arisen again recently, in the context of an application in a family case for an order for the appointment of an RI funded by DoJ.
15. Judge Kinney explained that the role of the RI was to assist in the delivery of evidence in order to ensure the court is not misled. Ms Maguire suggested it would be helpful to know what the demand in the family arena was likely to be. Judge Kinney advised that this was difficult to assess because, other than in exceptional cases, RIs are not requested as they are not considered to be an option. Mrs Kilpatrick suggested that it might be useful to run a pilot in a particular area in order to gauge the level of demand. The Chair said he has requested a RI in a case before him and would report back to the next meeting as to any benefits.

Divorce Proceedings

Correspondence from Ciaran White BL, Ulster University

16. The Chairman referred to the letter received from Ciaran White BL. He advised that Mr White has suggested that the shadow Board could consider the use of Article 3(4) of the Matrimonial Causes (Northern Ireland) Order 1978 to dispense with oral testimony where parties are divorcing on the two year grounds on the basis that special reasons justify its use. Judge Gilpin cautioned that an existing provision made to dispense with oral hearings in particular circumstances has not been brought into force and that the shadow Board would be seen to be over-stepping its remit if it were to implement this. He also suggested that he had found oral testimony useful in teasing out other issues relating to finance or children that would take more time to resolve if left until later in the proceedings, and that such a blanket approach could be seen to fetter judicial discretion. Mr Foster explained that it had been made clear by a previous Minister that the special reasons referred to in Article 3(4) were to accommodate a situation such as where a party was incapacitated and could not attend a hearing to give evidence. Master Sweeney advised that the issue had also been debated during the Review of Civil and Family Justice and it had been agreed that legislative reform would be required.
17. It was agreed that: (i) it would be for the individual judge to determine whether special reasons exist; (ii) as an existing provision to change legislation had not been enacted yet it would not be appropriate for the shadow Board to intervene, and (iii) three of the special reasons cited in Mr White's letter were essentially grounds for divorce and could not be said to constitute special reasons. The Chairman confirmed that he would arrange for a reply to issue to Mr White.

Action: Chairman to draft a response to Ciaran White BL's letter of 2 November 2018.

Online Application for Divorce – Potential NICTS Pilot

18. Mrs Kilpatrick advised that Mr Luney had spoken to this previously. She said that as part of the 'Courts 2020' Transformation Portfolio consideration was being given to piloting one of the following projects: 'Non-Contentious Probate End to End Solution' or 'Online Application for Divorce'. She advised that a review is required to determine which would be most appropriate but that it was unlikely that the Divorce pilot would be selected as it was limited

to a back office function whereas the Probate pilot would deliver an end to end solution. She confirmed that no definitive decision had been taken yet.

Resolutions outside court

19. Ms McDaniel referred to the 'Separation in Northern Ireland' booklet produced and distributed in conjunction with Family Mediation NI. She advised that DoH is working with DoJ on an information programme for parents who are separating and that a pilot is being developed to be launched in the Western Trust. She confirmed that work is in progress to determine the content of the programme and that an update would be provided at the next meeting.

Action: Ms McDaniel to provide update on pilot programme for separating parents at the next meeting in June.

Public Law Proceedings

Review of 'Guidance on Instructing Experts' in Public Law Proceedings

20. Mr Reynolds spoke to the draft paper on 'Guidance for the Instruction of Experts in Public Law Proceedings.' He explained that one of the key points addressed in the paper was the need to consider any requirement for expert evidence, and the identities of relevant available experts, at an earlier stage in proceedings. He advised that the paper was still in draft form and was being presented to the shadow Board for consideration. Judge Kinney confirmed that he had been part of the original sub- group, and that he, the LSA, and the Bar would need to contribute to this draft. The Chairman suggested that the sub-group should meet and present a final draft at the next meeting. It was noted that the Bar have been engaged in this work through Claire McKenzie and that she should be invited to attend any meeting of the sub-group.

Action: Sub-group to meet to discuss draft guidance, and report back to next meeting.

Experts

21. Mr Andrews spoke to a paper on the engagement of experts in legal aid cases. He advised that work is ongoing to develop a pilot to secure expert witness evidence for the courts through legal aid. He also addressed the issue of pre-payment of experts and set out the statutory position i.e. in the Family proceedings Courts, the solicitor is required to have discharged the liability before the Legal Services Agency can reimburse their claim for payment. He advised that the position was different in higher courts, where interim

payments can be made on application, though these may take up to six weeks. It was agreed that the paper would be adapted to clarify the process for practitioners, and sent to Ms Breen for circulation within the Law Society.

Action: Paper to be adapted by Mr Andrews and forwarded for circulation by Ms Breen.

Judicial Training

22. The Chairman referred to the Judicial Training paper provided by OLCJ. He noted the recommendation that all family judges are expected to attend regular and formal training as a group, is now achieved over three training sessions organised by the Judicial Studies Board per year (one per term). Judicial training in the art of interviewing children and child development was facilitated at a Family Law workshop on 8 March 2018, and will be supplemented by Signs of Safety and SBNI training on 21 March 2019, and updated regularly. It was agreed that recommendations FJ26 and FJ125 could be recorded as complete.

Action: Recommendations FJ26 and FJ125 to be recorded as complete.

Shadow Family Justice Board Advisory Group

23. Mrs Kilpatrick advised that the shadow Civil Justice Council Advisory Group had met, that the meeting had been well attended and that the members had considered it to be useful. She confirmed that the meetings would take place biannually but that smaller groups may meet in the interim to discuss specific issues.
24. Mrs Kilpatrick informed members that a date had been pencilled in for the shadow Family Justice Board Advisory Group to meet and that, if the shadow Board was content, she would be happy to chair the group. She advised that DoJ and NICTS would be represented on the Advisory Group and it was suggested that a representative from DoH should also attend. Ms McDaniels agreed to represent DoH at the meeting on 27 February 2019.

Correspondence

25. The Chairman confirmed that, following the last meeting, the letter received from Paula Bradshaw MLA regarding enforcement of Family Court Orders had been circulated to members together with the response which issued.

Any Other Business

26. The Chairman referred to the reference to the judiciary robing in the Family Justice Report. He confirmed that, as described in the Report, the practice is now that judges will ordinarily robe unless the nature of the proceedings requires them not to do so. The LCJ issued a Practice Direction on 18 December 2018 to this effect.

Next Meeting

27. The date of the next meeting was agreed as **Wednesday 12 June 2019 at 4.15pm.**