

## SHADOW FAMILY JUSTICE BOARD

**Minutes of the Seventh Meeting of the shadow Family Justice Board (sFJB) held on 10<sup>th</sup> October, 2019 at 4.15 pm in Judges' Assembly Room, Royal Courts of Justice, Belfast**

Attendees: Mr Justice O'Hara (Chairman)  
District Judge (MC) Prytherch  
Master Sweeney  
Stephen Martin (DoJ)  
Anthony Harbinson (DoJ)  
Deborah Brown (DoJ)  
Eilis McDaniel (DoH)  
Michael Foster (DoF)  
Louise Murphy BL (Family Bar Association)  
Kelly Breen (Law Society)  
Tom Cassidy (HSCT)  
Brendan Whittle (HSCB)  
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 formally recorded a note of thanks to Judge Gilpin following his appointment to the County Court bench. The Chairman noted that Judge Collins would be the new District Judge representative on the shadow Family Justice Board (sFJB) but that she was unable to attend today's meeting. The Chairman also extended a warm welcome to the new Director of Access to Justice, Anthony Harbinson, and the new Director of Justice Delivery, Deborah Brown, who were in attendance to observe this meeting.

### Apologies

2. Apologies were noted from Peter Reynolds, Deirdre Mahon, Peter Luney, Marie Roulston and District Judge Collins.

### Minutes of the Meeting of 12<sup>th</sup> June 2019

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

### Open Justice

4. The Chairman briefly outlined the background to the 'Media Access to Family Courts' pilot scheme and confirmed that the consultation on proposals for the pilot scheme had closed on 23<sup>rd</sup> August, with many respondents objecting to

the proposals. He advised that the sFJB sub-committee on Media Access to Family Courts had met with several of the consultees on 25<sup>th</sup> July to discuss any concerns or queries they had regarding the consultation document before they formally submitted their responses. He said that the principal concerns raised in response to the targeted consultation mirrored those given to the Gillen Review.

5. The Chairman informed members that legal reservations had been raised about whether the inherent jurisdiction of the High Court can be used as proposed to set aside section 12 of the Administration of Justice Act 1960 in order to share listing information with journalists for planning purposes and to permit them to report on matters observed during court proceedings. He advised that an amendment to the Court Rules may be required to circumvent the statutory prohibition. The Chairman said that a definitive legal opinion was awaited but that if an amendment to the Rules was required then the pilot scheme could not be progressed further by the sFJB at this stage. There was discussion surrounding the potential next steps in this scenario and it was agreed that the DoJ would need to consult on the attendant policy change before any amendment to the Court Rules could be initiated, and that depending on how long that process is estimated to take, it might be necessary to consider whether it would be more prudent to await the Department's consideration of the wider recommendations and consultation for full legislative change.
6. Mrs Elliott also advised that, following a recommendation received from the Information Commissioner's Office, the secretariat had met with the DoJ Data Protection Officer (DPO) to discuss the completion of a Data Protection Impact Assessment (DPIA) in respect of the proposals for the pilot scheme. She confirmed that a draft DPIA had been completed and shared with members. It was agreed that in the event that the recommendations were passed to the DoJ to progress, the draft could be utilised by DoJ.

#### Single-tier system

7. Mr Martin informed members that DoJ is currently working to produce policy options for consultation on a single family court jurisdiction. The Chair gave his consent for DoJ staff to observe in court and speak with some family Judges to help inform their proposals. Mr Martin undertook to provide an update at the next meeting.

**Action: Mr Martin to provide an update on the DoJ consultation proposals at the next meeting.**

## Voice of the child and vulnerable adults

### *Signs of Safety*

8. The Chairman said that the judiciary had received introductory training on the Signs of Safety (SoS) framework earlier this year and that the Judicial Studies Board are content for the matter to be included as a standing item for the organising committee to consider.
9. The Chairman advised that Judge Crawford had attended a SoS gathering on 2<sup>nd</sup> October which showcased the work, training and practice undertaken across the Trusts since the roll out of the SoS model had begun. Judge Prytherch had also attended the event and reported that it was useful to hear some case studies of how the model was working in practice. Mr Whittle confirmed that the model was being incrementally implemented across all five Trusts and that it was anticipated that training should have concluded by March 2020. He said that the gathering on 2<sup>nd</sup> October had been an opportunity for practitioners to demonstrate how the model is working in practice to focus on identifying risk of danger, but also to engage the community strengths to 'wrap around' the child and support the family. Mr Cassidy explained that the model placed a lot of focus on early pre-proceedings stages, hoping that once training had been completed, and the framework had bedded in, the judiciary should see a consistent practice going forward. He said that the training of the judiciary was also very important as it would familiarise judges with the types of documents and evidence which may be called upon in court.
10. Ms Murphy and Ms Breen confirmed that training had also been provided to the legal profession, and that positive feedback had been received from practitioners that the techniques used appeared to encourage parents to engage with professionals. Mr Cassidy confirmed that the approach could be applied to any type of case. There was some discussion as to how the interim plans would evolve into a long term exit strategy for whole life care going forward.
11. Ms McDaniel advised that the training which covered hundreds of staff was expected to be concluded by March 2020 and that the rollout was currently in the second year of a five year implementation plan, so would take some time to become embedded in all areas. Ms Breen said her experience was that those trained used good basic language and a white-board approach to focus on positive actions which allowed parents to feel more part of the process.

The Chairman suggested that it would be useful for the item to be revisited on future agendas in order to follow progress.

**Action: SoS to feature on future agendas in order to monitor the progress of the rollout.**

#### *Registered Intermediaries (RIs)*

12. The Chairman reminded members that it had been agreed not to prioritise a scheme to introduce RIs as children do not typically give evidence in the family courts, but that advocates should be better trained in the basics and good practice of advocacy. Ms Murphy and Ms Breen said they had not yet discussed adapting The Advocate's Gateway Toolkit on 'Vulnerable Witnesses and Parties in the Family Courts' for Northern Ireland. Ms Murphy said that the Advocacy Training Board (ATB) planned to introduce written guidance on working with children and vulnerable adults, and planned a series of lectures on the subject during the autumn.
13. Mr Martin informed members that DoJ was gathering evidence from several cases where the court had ordered RIs, to inform a future policy decision. The Chairman agreed that an approach could be made through the shadow Board to judges making such orders for further details. Mr Martin also informed members that the Litigants In Person (LIP) Reference Group is organising a workshop on vulnerable court users in February as part of a wider two day visit by the Access to Justice Foundation and that there may be some read-across from this event.

#### Resolutions outside court

##### *DoJ and DoH Pilot Scheme*

14. Mr Martin said that the DoJ had commissioned an animation aimed at separating parents to raise awareness of non-court options for resolving disputes. He also advised that positive discussions had been held regarding the delivery of a pilot programme of information sessions for separating parents in the North West.

##### *Mediation*

15. Ms Murphy confirmed that all members of the Bar who are accredited for mediation are listed on The Resolution Centre website which provides full information about the services and mediators available. It was felt that greater visibility of the website was needed with links added to the Bar or Law Society websites if this has not already been done. Mr Martin volunteered to

ask the LIP Reference Group where they would consider a link to The Resolution Centre, and any other relevant mediation services, would be best placed.

**Action: Ms Murphy to discuss raising the profile of The Resolution Centre website with the Bar Council. Mr Martin to ask the LIP Reference Group to consider where links to mediation services would be most visible to LIP.**

## Public Law Proceedings

### *NIGALA and Overview of Article 56 Appointments*

16. The Chairman noted that Mr Reynolds could not be in attendance today and referred to the update paper which had been shared containing a note of the meeting of the Regional Assistant Director's Forum on 6<sup>th</sup> September. He suggested that a NIGALA representative could deliver a progress report at the next meeting of the sFJB.

**Action: Update on proposals regarding Article 56 appointments to be provided at the next meeting.**

### *Guidance on Instructing Experts*

17. Ms Breen confirmed that a meeting was provisionally scheduled for 6<sup>th</sup> November. It was agreed that an update should be provided at the next meeting.

**Action: Update on the 'Review of Guidance for the Instruction of Experts in Public Law Proceedings' to be provided at the next meeting.**

### *Engagement of Experts*

18. Ms Murphy explained that funding for the engagement of experts was jointly provided by the Trusts, the Guardian Ad Litem and Legal Aid Services and that the parallel processes involved in securing funding can contribute to delay. Ms Breen advised that Mr Andrews is involved in the aforementioned meeting on 6<sup>th</sup> November and that the issue of Legal Aid would be discussed then, both in terms of how it might be expedited and also the policy and procedure surrounding how it is dealt with by practitioners. Mr Martin informed members that DoJ is working on a pilot approach in family proceedings to determine how experts might be appointed more quickly. He said that it was anticipated that the pilot approach would launch in January 2020.

**Action: Update on discussions surrounding Legal Aid and the engagement of experts to be provided at the next meeting.**

XY

19. The Chairman confirmed that his guidance note on the implications of the judgment delivered by Mrs Justice Keegan in 'XY' should be circulated by the Bar and the Law Society as appropriate.

**Action: Secretariat to provide approved guidance note for circulation by the Bar and Law Society.**

#### Delays in Children Order Cases/Performance Monitoring

20. The Chairman advised that the Lord Chief Justice had tasked the sFJB with investigating the increased delay in public law Children Order proceedings and suggested that a working group should be established to look at the areas where delay is occurring and investigate the causes. He noted that the President of the Family Division in E&W had invited two cross-professional Working Groups to look at similar issues, into practices and processes in both public and private law, and Medical Experts in Family Proceedings. Mrs Elliott said that it was hoped that early feedback from these groups could be provided to the sFJB working group.
21. It was agreed that nominations for representatives should be submitted within two weeks and that OLCJ would organise and facilitate meetings of the group as required.

**Action: Members to submit nominations for sFJB Working Group on Delay in Public Law Children Order Proceedings by Friday 25<sup>th</sup> October.**

#### Implementation of Practice Direction equivalent to 12J

22. Mr Martin informed members that the DOJ had launched a consultation on 'Protecting victims of domestic abuse from being cross-examined by perpetrators in family court proceedings' and that the closing date had been extended until 11<sup>th</sup> October. He said that he would provide an indication of the responses received at the next meeting.

**Action: Mr Martin to provide update on responses to DoJ consultation at the next meeting.**

#### Key priority areas

23. The Chairman reflected on the progress that had been made in the six priority areas since the shadow Board was established almost two years ago. He

invited members to consider what further areas should be prioritised for the sFJB to progress during the coming year given the continued absence of an Assembly and to forward suggestions to the secretariat within four weeks.

**Action: Members to submit suggestions regarding further areas for prioritisation within four weeks.**

### Any Other Business

#### *LIP Reference Group*

24. Mr Martin confirmed that the DoJ website is hosting information on the LIP Reference Group. Mrs Kilpatrick also advised that Professor McKeever had secured funding for further LIP research, focussing on the journey of LIP through the family courts.

#### *Guidance Note – Video Link in Family Law Cases*

25. The Chairman explained that the existing Guidance Note in respect of using video link facilities in family law cases was now 12 years old and the Family Bar Association and Family Law Committee had been invited to consider whether it might need revised. He noted that the courtroom technology refresh which is being rolled out along with a new in-court Wi-Fi solution will increase the availability of video link facilities. Ms Murphy confirmed that the Family Bar Association had submitted its views on the Guidance Note.

**Action: Courtroom technology refresh to be revisited on future agendas and considered in respect of any impact on the Guidance Note on Video Link in Family Law Cases.**

#### *“Family Bridges” – correspondence from Brian O’Sullivan*

26. Members confirmed that similar correspondence had been received in their Departments, and agreed to defer consideration until the next meeting.

**Action: Correspondence to be considered at next meeting.**

#### *Advisory Group update*

27. Mrs Kilpatrick confirmed that the second meeting of the sFJB Advisory Group is scheduled on 4<sup>th</sup> November and that members will also be invited at that meeting to consider which areas should be prioritised during the coming year.

### Next Meeting

28. The date of the next meeting was agreed as **Thursday 20<sup>th</sup> February 2020 at 4.15pm.**