

## SHADOW FAMILY JUSTICE BOARD

**Minutes of the Sixth Meeting of the shadow Family Justice Board held on 12 June, 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  
Laurene McAlpine (DoJ)  
Eilis McDaniel (DoH)  
Patricia O'Kane (NIGALA)  
Louise Murphy BL (Family Bar Association)  
Kelly Breen (Law Society)  
Deirdre Mahon (Western HSCT)  
Kim Elliott (OLCJ)

Secretariat: Katharine McQuade (OLCJ)

1. The Chairman welcomed everyone to the meeting and thanked the members for their attendance. He welcomed Deirdre Mahon as the new representative of the Association of the Executive Directors of Social Work.

### Apologies

2. Apologies were noted from Peter Reynolds, Marie Roulston, Paul Andrews, Mandy Kilpatrick, District Judge Gilpin, District Judge (MC) Prytherch and Michael Foster.

### Minutes of the Meeting of 23 January 2019

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

### Open Justice

4. The Chairman reminded members that it had been agreed at the previous meeting that a sub-committee should be established to develop proposals for a 'Media In Court Pilot'. He confirmed that the sub-committee had now met three times and had addressed complicated issues such as the accreditation of journalists and whether reporting should be permitted by default or by application to the court. The Chairman advised that the sub-committee were now in a position to consult on the proposals which had been developed, and he asked members if they had any views on the draft consultation document which had been circulated in advance of the meeting, or the proposals contained therein. He also asked for views on the proposed list of targeted consultees. Ms Mahon suggested that the Information Commissioner and

each of the five individual Health and Social Care Trusts should be added to the list of consultees. She also queried why The Detail had been singled out from other media organisations for inclusion on the consultee list. Mrs Elliott explained that the list of consultees included those, like The Detail, who had originally responded to the 'Open Justice' chapter of the Preliminary Family Justice Report. Ms Murphy suggested that the Men's Advisory Project should also be added to the list of consultees. Ms McDaniel queried whether parents who would be directly affected by the proposals should be consulted. It was agreed that the concerns of affected parents would be raised through either the Bar or the Law Society.

5. Ms Breen informed members that the feedback received to date from parents affected by the 'Proof of Concept' phase of the pilot was largely negative. She queried whether any consideration had been given to what would constitute acceptable grounds to contest the presence of the media in court. The Chairman considered that a party would need to demonstrate some form of extended vulnerability, however he was reluctant to issue any guidance on this and noted that the grounds were likely be tested during the first applications of this nature.
6. The Chairman proposed that, if members were content, the consultation process should begin on 17 June 2019 for a period of nine weeks, and proposed to invite consultees to meet to discuss their concerns in advance of the closing date so they could lodge more informed written responses. All responses received should be analysed prior to the next meeting of the sFJB in September and a view will then be taken at that meeting regarding the way forward. Members agreed that this was an appropriate course of action.

**Action: The following to be added to the consultee list for the Media In Court Pilot: Information Commissioner, Men's Advisory Project, the Health and Social Care Trusts.**

**Action: Consultation to issue on 17 June to targeted stakeholders and close on 16 August 2019. Invitations to meet with the sub-committee before closing date to issue early July. All responses to be analysed prior to the next meeting of the sFJB on 19 September 2019.**

#### Problem-solving courts

##### *Family Drug and Alcohol Court (FDAC)*

7. Ms McAlpine advised members that the pilot was coming to an end with fourteen families having entered the programme. She said that the

expectation is that 3 families, representing 8 children, will successfully graduate. Ms McAlpine noted that there was a sense that some of the families participating in the pilot had more severe problems than had been anticipated and this may explain the low level of success. She confirmed that a formal evaluation will take place in the autumn.

#### *Domestic Violence Perpetrators Programme (DVPP)*

8. DoJ have confirmed that the pilot will be paused and will not be funded in 2019/20 with funding diverted to extending the more successful non-adjudicated alleged perpetrator programme operating in the Western Trust. There was discussion surrounding the lack of incentive for offenders to participate in the DVPP pilot and the consequences it held for them in the criminal arena (to participate offenders are required to plead guilty and accept a conviction which they might otherwise avoid). Ms Murphy advised that she currently had her first referral going in to the non-adjudicated alleged perpetrator programme in Belfast, and would update at the next meeting.

#### Single tier system

9. Judge Kinney explained that proposals for the reorganisation of Family Care Centre business in Northern Ireland were consulted on last year and that respondents raised a number of issues about the proposed arrangements for the West of the province. He noted that there was a specific resource issue in this area. He suggested that the outworkings of the recent consultation on 'Proposals for the Creation of County Court Civil Hearing Centres in Northern Ireland' might potentially free up courtroom space in Londonderry and assist with the reorganisation of family business. The Chairman noted that the DoJ Corporate & Business Plan for 2019-2022 contains an objective to 'prepare an outline business case for estate in the North West' by March 2020.
10. The Chairman asked Ms McAlpine if the Department had any plans to progress the recommendation to legislate for a single tier. Ms McAlpine confirmed that the DoJ planned to issue a consultation on a unified family court by the end of the calendar year.

#### Voice of the child and vulnerable adults

##### *Signs of Safety*

11. The Chairman confirmed that the JSB Family Law Training event took place on 21 March 2019 and the presentation on 'Signs of Safety' was delivered at this event. Ms Murphy said that she had been liaising with Mr Reynolds to arrange a date for the training to be delivered to the Bar. Ms Breen advised

that this training had been provided for solicitors and that a further session may be planned. She said that ongoing training in this area was also provided through the Children Order Panel.

12. The Chairman suggested that the 'Signs of Safety' training for judiciary should be revisited annually in order to keep the judiciary up to date with developments. Ms Mahon confirmed that this could be accommodated. She also informed members that the 'Home on Time' project was continuing alongside 'Signs of Safety' and that the 'Signs of Safety' approach should assist with the project.
13. It was agreed that, in light of the training that had been delivered to judiciary, recommendation FJ125 could now be recorded as completed but that training in this area should be regarded as an ongoing process.
14. Ms Murphy raised the issue of the terminology used in the family court arena in respect of children and the negative reaction this engenders in those children. Ms McDaniel advised that work to develop a new lexicon based on the views of children is currently underway. All agreed that improvements can be made immediately by using more clear and considerate language and that this is to be encouraged by all professionals in court.

**Action: Secretariat to record FJ125 as completed.**

**Action: OLCJ to arrange for 'Signs of Safety' training to be provided annually to the judiciary.**

#### *Guidance and training*

15. Ms Murphy said that the Advocacy Training Board had established a working group to implement specialist training and written guidance for working with children and vulnerable adults. Ms Breen confirmed that a Children Order Panel Day on 30 May 2019 had been devoted to dealing with vulnerable witnesses and that a further shorter session on the subject would take place in the autumn.

#### *Registered Intermediaries (RIs)*

16. The Chairman noted that the sFJB had previously discussed the cost of setting up a scheme to introduce the use of RIs in family courts and that it had been agreed that it should not be prioritised at this stage, but kept under consideration by DoJ. He explained that while a RI had been requested in a case before him, the case had settled after the Ground Rules Hearing and he was therefore unable to explore the benefits of an RI in the family arena.

Judge Kinney advised that in the criminal courts a limitation was placed upon the use of RIs as under the legislation they can only assist with giving evidence. He confirmed that in his experience a good RI can be immensely valuable.

17. The Chairman suggested that it might be beneficial if advocates were brought back to the basics of advocacy and simpler lines of questioning. He referred to The Advocate's Gateway Toolkit on 'Vulnerable Witnesses and Parties in the Family Courts' and said that it may be useful to look at the extent to which a Toolkit like this, which is phrased for the English justice system, can be incorporated into the Northern Ireland system. The Chairman asked if the Bar, the Law Society and Ms Mahon could look at adapting the Toolkit for this jurisdiction and report back to the sFJB at the next meeting in September.

**Action: Ms Murphy, Ms Breen and Ms Mahon to consider The Advocate's Gateway Toolkit 13 and suggest how it may be adapted for Northern Ireland.**

#### *Extension of NSPCC Young Witness Service*

18. Ms McAlpine informed members that, in light of concerns regarding the practical operation and value of the service in the criminal sphere, it had been agreed that a pilot should not be introduced at this stage. She advised that the Department would be happy to revisit the issue in the future should an appetite emerge.

#### Divorce Proceedings

##### *Response to Ciaran White BL*

19. The Chairman confirmed that the correspondence from Ciaran White BL, on the use of the discretion contained in Article 3(4) of the Matrimonial Causes (Northern Ireland) Order 1978, had been responded to in the terms agreed at the previous meeting and that the response had been circulated to members.

##### *Online Application for Divorce – Potential NICTS Pilot*

20. Master Sweeney explained that NICTS had selected the 'Non-Contentious Probate End to End Solution' over the 'Online Application for Divorce' pilot. She added that the probate pilot will potentially inform the possibility of divorce online in the future. Ms Mahon queried whether children's voices had been accounted for in the prospect of online divorce. Master Sweeney confirmed that children had been very much considered in the Review of

Civil and Family Justice and that the mechanism for the judiciary to order an oral hearing where appropriate would be available.

### Resolutions outside court

#### *DoH & DoJ Pilot Scheme*

21. Ms McDaniel advised that the 'Separation in Northern Ireland' leaflets had now been distributed to court offices. She said that the DoJ had also recently awarded a tender to develop an animation to raise awareness of other options for resolving disputes. Ms McDaniel also confirmed that discussions on a pilot programme of information sessions for separating parents in the Western Trust area are ongoing and it is hoped that pilot sessions can begin in the autumn.
22. The Chairman queried why the uptake in mediation provided by the Bar and Law Society was so low. Ms Murphy suggested that there were issues surrounding legal aid funding which had since been addressed, and also concerns that cases involving domestic violence or abuse issues were not appropriate for family mediation. Ms Breen noted that commercial mediation was more prevalent in the Law Society than family mediation. The Chair proposed that a method of advertising family mediation available from both sources might be useful. Master Sweeney said that in practical terms there are difficulties identifying a consistent point of contact to arrange a referral. Ms Murphy agreed to make enquiries regarding this issue.

**Action: Ms Murphy to investigate the process of referring parties for mediation and report back to the sFJB.**

### Public Law Proceedings

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

23. Ms O'Kane spoke to the 'Briefing Paper on Article 56 Appointments'. She said that she hoped the proposals contained in the paper would address some of the concerns expressed regarding NIGALA's original proposals. She noted that the judiciary had held reservations in particular about the initial suggestion that the appointment of a Guardian Ad Litem (GAL) be reserved for those cases where, at the conclusion of the Trust's investigation, a public order is being sought. Ms O'Kane advised that the terms of reference would be devised at the forthcoming Assistant Director Forum on 5<sup>th</sup> July 2019 to consider existing practice across the five Trusts and achieve consistency. Judge Kinney was supportive of this indicating that the work on Art 56 highlighted the importance of understanding the Trust processes.

24. Ms Mahon queried whether the proposals might interact with 'Signs of Safety'. Judge Kinney welcomed this idea and said that integrating this work could make a very interesting change.

#### *Guidance on Instructing Experts*

25. Ms O'Kane spoke to an update paper on 'Review of Guidance for the Instruction of Experts in Public Law Proceedings'. She confirmed that some cultural and logistical changes had been identified and that a further meeting is to be arranged to more fully explore the range of stakeholder views in response to the NIGALA paper presented at the previous meeting.
26. There was discussion surrounding a decision of Mrs Justice Keegan in the matter of 'XY' where the judge allowed an appeal on the basis that more information was required to decide on a freeing order and to this end the mother should have her own independent assessment. The Chairman noted that the decision was being cited as verification that expert reports should be required in freeing order cases and undertook to circulate a note to judiciary clarifying the position.

**Action: Chairman to circulate guidance to judiciary on the implications of the decision in 'XY'.**

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

27. Members agreed that this should be a standing item on the agenda going forward.
28. The Chairman highlighted the statistics in the recent Children Order Bulletin which indicated an increased delay in public Children Order proceedings. Ms O'Kane said that after a case had transferred it was not uncommon for there to be a delay in listing the case for further direction. Judge Kinney explained that if a District Judge has concerns about a case which they are transferring they now lodge a request with the office for an early listing and the delay in this instance would ordinarily be about two weeks.
29. Ms Murphy said that the particular issues causing delay in Belfast cases were the late submission of expert reports and the pressure social workers were coming under to cover for colleagues on extended periods of sick leave. Judge Kinney agreed that it was increasingly common to find that expert reports cannot be obtained quickly due to the limited pool of experts available. The Chairman suggested that the area causing concern may actually be the run of the mill cases which were unlikely to be affected by delay in obtaining specific expert reports. Judge Kinney advised that issues have always existed in these

cases so it would be necessary to establish what has aggravated these issues and at which tier the pressures are being felt. He suggested comparing cases from two years ago with cases currently progressing through the system.

30. There was discussion surrounding the Care Proceedings Pilot and its success in tackling delay. Judge Kinney noted that pilot cases were clearly identified and everyone involved placed an emphasis on the case which speeded its progress. Ms Murphy thought that the pilot may only have involved a small proportion of cases which required expert evidence. Ms McDaniel advised that the review meetings which had taken place during the pilot had worked very well.
31. Ms Murphy suggested that the more complex cases might be skewing the statistics in the Children Order Bulletin. Judge Kinney proposed that a working group should be established to interrogate the statistics and draw out themes. The Chairman agreed to take this forward.

**Action: Chairman to establish a working group to examine the statistics concerning delay in public Children Order proceedings.**

**Action: Matter to be a standing item on the sFJB agenda going forward.**

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

32. Ms McAlpine advised that the DoJ intends to consult over the summer on legislative provision preventing an individual charged with domestic violence offences from cross-examining their victim in the family court arena. It was agreed that consideration of a Practice Direction should be carried over to the agenda of the next meeting in September.

**Action: Matter to be added to the agenda of the seventh meeting of the sFJB on 19<sup>th</sup> September.**

#### Shadow Family Justice Board Advisory Group

33. The Chairman confirmed that the Advisory Group had held its inaugural meeting on 27<sup>th</sup> February. He said that the Advisory Group had been updated on the progress that the sFJB had made to date and it had been agreed that the minutes of the sFJB meetings would be routinely circulated to the Advisory Group along with any consultations or relevant documents as required. The Chairman advised that the Advisory Group would formally meet twice a year but that ad-hoc meetings of particular members could be arranged as required to discuss specific issues.

#### Any Other Business



34. Mrs Elliott informed members that a request had been received from the Litigants in Person Reference Group to place progress updates on the JudiciaryNI website. Members felt that as the group are sponsored by DoJ (along with the Northern Ireland Human Rights Commission and Ulster University), and have an independent chair, it might be more appropriate for the progress reports to be hosted on the DoJ website. Ms McAlpine agreed to consider this and to report back.

**Action: Ms McAlpine to confirm if the Litigants in Person Reference Group progress reports will be hosted on the DoJ website.**

35. Mrs Elliott also advised members that the JAM card initiative had been rolled out across DoJ and that the JSB would be issuing advice on this to the judiciary. Members should make colleagues aware of the existence and purpose of the card – detail of which can be found at [www.jamcard.org](http://www.jamcard.org)

#### Next Meeting

36. The date of the next meeting was agreed as **Thursday 19 September 2019 at 4.15pm.**