

SHADOW FAMILY JUSTICE BOARD

Minutes

Minutes of the Twelfth Meeting of the shadow Family Justice Board (sFJB) held on 18th October 2021 at 4.15pm via WebEx video conferencing.

Attendees: Mr Justice McFarland (Chair)
Judge Kinney
District Judge (Magistrates Court) Prytherch
District Judge Logue
Master Sweeney
Karen Ward (NICTS)
Eilis McDaniel (DoH)
Paul Andrews (LSA)
Michael Foster (DoF)
Tom Cassidy (HSCT)
Brendan Whittle (HSCB)
Suzanne Simpson (Family Bar Association)
Suzanne Rice (Law Society)
Geraldine Hanna (Gillen Training Group)
Dawn Shaw (NIGALA)
Mandy Kilpatrick (PPS to the Lady Chief Justice)
Kim Elliott (LCJO)

Secretariat: Julie McMurray (LCJO)
Ashleigh Woods (LCJO)

In Attendance: Geraldine Hanna (The Gillen Training Group, Chair)

1. The Chair welcomed everyone to the meeting and thanked members for their attendance.
2. The Chair explained that he has been appointed as the new senior family judge and Chair of the shadow Family Justice Board, he expressed best wishes to Mrs Justice Keegan following her appointment as the new Lady Chief Justice.
3. The chair extended a warm welcome to Geraldine Hanna (Chair of the Gillen Training Group) ("the Training Group") and thanked her for taking the time to discuss the work of the Group and how it will cross over into the work of the sFJB.

Apologies

4. No apologies were noted.

Geraldine Hanna – Gillen Training Group

5. Ms Hanna explained that the Group is comprised of representatives from DoJ, PSNI, PPS, the legal profession (Bar & Law Society), Probation Board, NI Guardian Ad Litem Agency of which she is the Chair. The Training Group's work is concerned with the Gillen Review into Serious Sexual Offences, in particular the 253 recommendations concerned with sexual violence, of which 33 relate solely to training. This training is centred on the development of a trauma-informed approach.
6. Ms Hanna explained that Dawn Shaw (NIGALA) was also connected with the Training Group's work, which would cross over into the parameters of the sFJB. NIGALA are focused on the issues which affect children.
7. Ms Hanna continued to explain that the key development at present has been the mapping of existing learning with the required training needs, this has spanned over 17 areas. The Criminal Justice Board has now endorsed a Learning Framework which has been developed by the Group. The Framework outlines training opportunities specific to practitioners and others across the board. The focus is to identify a multidisciplinary approach which can cut across all tiers and improve knowledge, awareness and sensitivity for those dealing with every aspect of sexual offence cases. While Gillen recommendations state that training should be mandatory, agreement has been reached with the Bar Association and the Law Society to undertake CPD accredited courses. The Training Group monitor attendances and evaluates for future courses.
8. Ms Hanna explained that the Learning Framework is a live document with a broad range of classes which include over 40 training courses covering best evidence gathering, rape myths, anti-racism, domestic abuse, rights of the child, Human Rights and many more. These classes can be accessed at the person's own time and they will earn CPD points. There is a wish for as many courses as possible to be via e-learning although some do not lend themselves to this format. Being live, the framework is continually developing.
9. Ms Hanna stated that accreditation and how to endorse training across agencies is a key issue that will be further explored over the coming months. The aim is have a panel of representatives to review and assess the training, how it impacts the legal system and profession, and also the look at the impact of trauma on survivors. The Group is also looking at 'train the trainer courses' and NEXUS NI is developing a course on the impact of sexual abuse. Ms Hanna also said the Group could consider any training areas on the civil side for example in areas of disclosure. She said she would be happy to share the Training Framework with the Board. Ms Hanna said the PSNI already use the Training Framework readily and will hopefully continue to do so in the future.

10. The Chair expressed his thanks to Ms Hanna for her presentation, and stated that it was clear much work had been done. He said he would be grateful if the document could be shared as it would be a useful tool and one which the sFJB can watch as it develops.

Action point: Ms Hanna to share the Training Framework with the Secretariat to enable it to be shared with members.

Minutes of the sFJB meeting on 17th May 2021.

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

COVID - 19 Business Continuity, Recovery & Modernisation

LCJO Operational Update

12. Ms Kilpatrick said that earlier in the year the Lord Chief Justice requested that NICTS review the potential to increase consultation and waiting facilities available in all court buildings. The review was completed at the end of May and these rooms are now being made available (albeit with limited capacity) at a local level, upon request. The Lady Chief Justice (LCJ) had welcomed the opening of the Law Society's 'Meeting Space', providing flexible space which can be configured to accommodate a range of services, including mediation, consultation and meetings.

13. Direct liaison between the LCJ and her counterparts in UK is ongoing and it is anticipated that hybrid hearings will continue to be a feature of court business, as will administrative case management. Ms Kilpatrick explained that Judges have adopted a remote by default position to support NICTS in reducing footfall within our buildings and providing more effective use of court time as well as reducing waiting time, travelling time and costs. It has been noted that in-person hearings have increased where appropriate in line with PHA guidance and social distancing requirements. A review of ventilation systems within the court estate is continuing to ensure that parties remain safe when required to attend.

14. Ms Kilpatrick stated the LCJO is currently working with NICTS to build on the practices established during the Covid restrictions and use them as a basis for further development. The continued use of remote provisions across all business areas is critical to the courts' ability to continue to conduct business at a level and pace that will maintain recovery progression and the LCJ has urged DOJ to ensure the legislation required to continue with current arrangements is in place before the Coronavirus Act (CVA) sunset clause in March 2022.

Judicial Modernisation Update

15. Mrs Elliott explained that the first phase of the e-bundles pilot was successful within Family, Chancery and Commercial sections of the High Court, using the Bar Library's Optimised Brief & Bundle Service (OBBS). She explained that the feedback was very encouraging with most parties reporting that they found it more efficient than using hard copy bundles, in terms of time to prepare and ease of use, particularly where they had to navigate between legal authorities. Other positives reported included security, storage and transportation of the e-bundle, the ability to quickly 'search' the e-bundle, and to fact check during the hearing. Mrs Elliott noted that representatives suggested e-bundles would best be used for legal submissions involving voluminous papers, and perhaps less so for hearings involving witnesses.
16. Mrs Elliott informed members that the Judicial Digitisation Steering Group (JDSG) are now planning the second phase of the e-bundles pilot using 'Bundledocs' which is commercially available and in use in some solicitors practices already. This phase will similarly be limited to the legal profession with cases before the High Court, which are at a relatively early stage of building the case papers but with a hearing by the end of term, to maximise the learning from those using the software. As with phase 1, Bundledocs services will be available free of charge for a small number of pilot cases, and support will be provided by LCJO and NICTS staff. A MS Teams demonstration took place on 14th October, Mrs Elliott encouraged practitioners/members to help identify suitable cases to be tested in the pilot (with the consent of both sides).
17. The Chair said he was calling on the Law Society and Bar to highlight suitable cases, allowing for the pilot to be tested to evaluate the scheme. If some cases could be identified they could commence within the next term. Ms Rice sought confirmation that the test cases were restricted to the high court only and Mrs Elliott confirmed that this was the case.

Modernisation update

18. Mrs Ward explained that the NICTS Modernisation Programme had been accelerated by the challenges faced during Covid-19. She said that by working with the judiciary, justice partners and the legal profession, and listening to user feedback during this period, a number of changes and enhancements to improve the technology available in courtrooms and tribunal hearing rooms has been implemented;
 - Upgrade of the new courtroom technology (providing upgraded audio and video technology and Wi-Fi connectivity) continues with 54 courtrooms now completed including 6 courtrooms in RCJ (Commercial, Chancery, Family

Court 1, Masters Court, Nisi Prius and QB2), Laganside Ct 7 and Dungannon Ct 3 completing upgrades over the summer months. Wi-Fi is available in all courtrooms.

- Currently 72 Sightlink licences and 20 WebEx licences are in operation, and an additional 30 Video Conferencing Units installed in courtrooms and tribunal hearing rooms to facilitate remote and hybrid hearings in all operational courtrooms across the court estate. Enhancements to video conference products are being implemented.
 - The Probate Portal went live on 14 June enabling applications for grants of probate and letters administration to be progressed online. Uptake and feedback has been positive from public, solicitors and staff. As of 21 September, 355 applications have commenced on the portal and 236 applications have been completed with 1207 documents uploaded and 155 grants issued. The portal is currently being expanded to enable the lodgement and extension of caveats via the probate portal. This is a pilot project and will be evaluated for future online services.
19. The draft Digital Strategy has been revised taking into account comments from the judiciary and key stakeholders and will be provided to the Modernisation Portfolio Board for sign off before being presented to the Strategic Oversight Group in November for approval.
 20. Operationally there is a real desire, and need, to see remote provisions extended beyond the March 2022 sunset clause - NICTS continues to work with DoJ colleagues to establish a basis on which the CVA provisions may be extended beyond March 2022 (subject to Executive support given the cross cutting nature of the request), in recognition that courts recovery planning assumptions establish a need to late 2023. Mrs Ward highlighted that at the same time the Department has initiated work to explore consultation options, appropriate legislative vehicle and a time line for post CVA live links provisions which can be put before the Executive in the new mandate.
 21. In preparation for an eventual relaxation of social distancing regulations, a further review of the Covid Secure Risk Assessments has commenced. This review will comprise a spatial assessment and a bespoke ventilation assessment developed by the Estates team, the procurement of Co2 monitors has commenced as some buildings do not have the same level of ventilation as others, this will allow the Department to monitor the safety of the court rooms. Mrs Ward asked members if they had any issues that had arisen and welcomed their views in relation to business recovery.
 22. The Chair noted the need and benefits of remote hearings and the effects on business continuity. Suzanne Simpson agreed with the Chair on the advantages but said there was a need to get the balance right. She noted that there was concern for the younger members of the profession unable to gain court room

and advocacy experience. She also stated that there were difficulties when cross examining witnesses, nuances could be missed and remote hearings took away from the ability to read body language and have that feel for the case. Ms Rice echoed the opinions of Ms Simpson for her younger counterparts and their ability to gain experience, when it is difficult to spectate or witness a case. Ms Rice continued to raise concern over the different approaches by the lower tier courts, that each is different and there has been an increase in volume of practitioners attending court when this is not the practice guidance. She expected that there should be consistency across the board.

23. Judge Prytherch said that her internet connection was intermittent and that some do not engage well remotely and can become disconnected.
24. The Chair noted that the use of remote courts is easier for the higher court tier as they have fewer case numbers, but that there are risks and limitations with the FPC courts and the volume there. Judge Kinney expressed his dissatisfaction at the quality of sightlink within his court, and said he has had to order more in person hearings. He has noted digital fatigue, issues with the location of parties and the reliance on their Wi-Fi capacity.
25. The Chair noted the limitations of remote hearings, but said that unless the social distancing policy is relaxed they will need to continue. Ms Kilpatrick said we are constrained at present but must continue progressing cases. The Chair said that cases should be reviewed on a case by case basis.

Problem-solving courts

Family Drug and Alcohol Court (FDAC)

26. Mr O'Connor explained that the evaluation into the FDAC is being developed with pro bono support from the academics at QUB (Queens University, Belfast), which has continued to be impeded by pressures 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.

DoJ Expert Witnesses pilot scheme

27. Mr O'Connor highlighted that positive signs continue to emerge from the Expert Witnesses Pilot scheme. Between the launch in January and August 2021, The General Authority was used 152 times, which represents 85% of cases. Just 27 cases, 15%, fell outside the General Authority. In most cases that seems to be because the expert was approved before the General Authority was introduced. In a few cases it appears the solicitor did not use the correct codes when applying but that can obviously be addressed through further communications with the profession and we are reassured that the work did in any event fall within the scope of the pilot in terms of hours and the hourly fee. The

Department expects to undertake a more formal six-month review including qualitative analysis shortly.

28. Ms Rice noted the success of the scheme but said that there is a concern regarding the rate set for the expert witnesses. It will be necessary to keep a watchful eye on the number of experts retained as it would not be desirable to be left with a limited pool. Mr Andrews agreed with Ms Rice, stating that if there was an overdependence on the same experts inevitably this would cause delay within the system.

Voice of the Child and Vulnerable Adults

Registered Intermediaries

29. Mr O'Connor confirmed that the Minister's commitment to exploring the provision of registered intermediary (RI) support to vulnerable court users in the civil and family courts has been reflected in the Civil Justice Modernisation Delivery Plan published on 4 August with an undertaking to consult later this year. Preparatory work is ongoing in the Department. In the interim, to inform policy the Department has been developing evidence on scope and need by providing RIs on a case by case basis in civil and family proceedings, subject to an assessment of need and a direction of the court. To date there has been 18 cases of RIs used with Family and Civil court settings, with 6 requests received from August 2021. Support has been provided on the same basis as the criminal scheme, that is, restricted to the giving of evidence.
30. The Chair highlighted the great work of the RIs and the useful service that they provide. The RIs that have been used within the family court have been positive. Suzanne Simpson said she has had two cases and found the RIs very helpful. Suzanne Rice echoed this statement, but thought some further training on the role of RIs would be helpful.

Resolutions outside court

DoH & DoJ Private Family Law Early Resolution Action Plan (The Plan)

31. Mr O'Connor explained that The Plan highlights two aims, to support parents to resolve disputes outside court wherever possible and to support the early resolution of disputes which do come before the courts.
32. An animation highlighting the benefits of mediation and the realities of resolving disputes in court accompanied the launch of the Plan and it is expected more tools and guidance for parents will be launched in coming months, which will include parenting templates, guidance for Litigants in Person (LiP) – on their first interaction with the justice system, 3D tours of the court rooms, together with an animation which will help children understand the process.

33. Mr O'Connor explained that 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 and as a next step there will be engagement with stakeholders to help ensure the right tools are developed and are delivered in the right way. Subject to that engagement it is also hoped forthcoming actions will include a mediation pilot and pilot information sessions for parents.
33. The Chair said that the LCJ wished to set in place a pilot which would assist parties in private family law disputes to achieve resolution to their disputes. This would not be a mediation process, but would involve listing suitable cases for what will be described as 'Resolution Hearings'. The Chair is consulting with the Law Society and the Bar. He said he would concentrate on High Court cases in the first instance.

Public law system

NIGALA Subject Access Request (SAR) Protocol

34. Dawn Shaw introduced the draft NIGALA SAR Protocol and said she would welcome comments. She explained to members that the Chair of the NIGALA Information Governance Committee had suggested it might be helpful to have an agreed process/protocol for the release of documents following a subject access request. The draft has passed NIGALA internal governance. Ms Shaw said the Protocol will not have a material impact on the courts. NIGALA will update their website showing the types of requests that can be considered in line with the protocol. The Chair said the Protocol would be considered and feedback provided.

Guardian Ad Litem (GAL) & Social Worker resources

35. Ms Shaw noted the pressures faced within NIGALA due to the impact of COVID 19 and the continued increase in the numbers of children and young people coming into care. The waiting list for allocating a Guardian remains around 52. This is fluid dependent upon the availability and capacity of the Guardians to take on new cases.
36. The Chair queried the time to allocate a Guardian and Ms Shaw said it is difficult to give an approximate time, as all requests for Guardians are triaged within the agency to ensure the most urgent cases are given priority, meaning the list is ever moving.
37. Ms McDaniel noted serious pressures in regards to social worker shortages and explained that these issues are replicated throughout all regions and across all court tiers. She clarified that the DoH are aware of the resulting delays and informed members that the Trusts are examining the factors which are contributing to this. They will be evaluating the cases that have been in the

system over a set period, and looking at how to address the issues raised. The DoH hopes to produce a report into this matter in June 2022. The paper will be shared with the sFJB when completed.

38. The Chair queried the issue of staffing resources within the Trusts and Ms McDaniel explained that the Trust and Executive Directors are looking into staff shortages, taking into account the courts concerns. She acknowledged that the Trust is carrying a vast amount of vacant posts and said there have been particular issues in recruitment and retention of staff. The DOH will be holding a workplace review with workshops taking place in November and December. It is hoped that a report will be available in June next year.
39. The Chair asked if the Minister for Health was aware of the staffing issues at present. Ms McDaniel explained that the Minister was aware of the challenges and a review of Children's Services Gateway, which will include leaving and aftercare, will commence in early 2022.

Interim Care Orders

40. Ms McDaniel advised members that following the Access to Justice Review and the Care Proceedings Pilot, the DoH understand that there is a need for a review into the ICO process. The DoH is commencing a consultation in the coming months. The Chair queried when this should be expected to conclude, Ms McDaniel stated that the report should be due in the autumn of 2022.

Private law system

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

41. Mr O'Connor explained that there is significant work required to implement the provision in the Act on prohibition of cross-examination in person in family proceedings (it requires the making of various regulations and putting in place the necessary operational arrangements in regard to legal representatives appointed by the court to carry out cross-examination on behalf of a party prohibited from doing so in person), and a working group has now been established to take this forward. Work is underway on the court rules which are required to implement the provision in the Act in regard to special measures for victims of domestic abuse giving evidence in family proceedings, however, it will be for the Rules Committees to make the Rules.
42. He continued to highlight that the Department is also taking steps to progress implementation of the legal aid financial eligibility waiver for victims of domestic abuse provided for by section 28 of the Act. A strategic outline business case considering options for implementation of the waiver has received Department of Finance approval. The next step will be to engage with stakeholders on the implementation of the waiver, in particular to explore how victims of abuse can best be enabled to demonstrate their eligibility for the

waiver, with a view to introducing the waiver alongside the provisions of the Act relating to the domestic abuse offence. This engagement will also provide a foundation for work on the report required under section 29 of the Act, considering potential additional forms of support for victims of abuse.

43. The Chair queried the timeline and Mr O'Connor said the aim is to implement some aspects by November 2022 with further clauses by March 2023.

Delays in Children Order Cases/ Performance Monitoring

Review of the COAC Best Practice Guidance

44. Ms McDaniel said that a substantial over-arching review of the COAC Best Practice Guidance is required as a priority. NICTS, DoH and DoJ have established a Steering Group (jointly chaired by NICTS and DoH) to oversee the review, which has been split into two distinct work programmes, namely (i) scoping exercise to agree work to be undertaken and proposals regarding enhanced effectiveness; and (ii) development, implementation and review of the revised guidance. The next Steering Group meeting is scheduled for this month, after which time a more definitive timeline will be available and a more detailed update should be available for members.

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

45. Judge Kinney confirmed that members had prior sight of the minutes from the sub-committee's working group on delay, which included the minutes from the working group on criminal investigations and as such stated he would be happy to answer questions. No questions were forthcoming

Other Areas

Litigant in Person (LiP)

LiP Reference Group

46. Mr O'Connor said that The Litigant Voice website has now launched and will hopefully be a useful means of sharing information with LIPs and for sharing information on the work of the Reference Group. A meeting of the LIP Reference Group took place on Tuesday 12 October. It is understood there will be some changes to the LIP members and given those new members and the fact the Group has now been working for two years the meeting was used as an opportunity to review work to date and decide on next steps.
47. The Chair welcomed the tools available on the website. Ms Simpson stated that whilst the website contained guidance on many areas, she understood that there was no section which explained how a LIP should conduct themselves during court proceedings. Judge Logue agreed and said that information

should be included to clarify for the participant, in terms of conduct, what is expected of them within the court system.

Action Point: Mr O'Connor to share the link to the LiP website with members.

Other Business

Establishment of a Regional Care and Justice Campus

48. Ms McDaniel highlighted the Review of Regional Facilities for Children and Young People and how it was made it clear that the needs of children and young people were not being well served by having two separate systems resulting in many of the same children experiencing frequent moves between facilities. She said work was in process to create a single care centre. DoH & DoJ are committed to developing a needs-led model of practice in the Secure Care Centre which clearly identifies risks and the mitigation measures necessary to deal with these.
49. Discharge plans for the Secure Care Centre will ensure that each child admitted will have a plan in place to support discharge from the Centre and resettlement back into the community. Planning for discharge/ transition will begin from the point of admission, and will be regularly reviewed.
50. The Departments acknowledge that further detail is required as to how the Care and Justice Campus will operate in a coordinated way and the specific nature of any satellite provision as part of the Campus, to ensure that children stay out of care. Work is ongoing at present, with a consultation to commence in October. Proposals will be developed following the outcomes of the consultation.
51. The Chair said that at present there are no facilities within Lakewood for a young mother of 16 or younger to see their baby or build a quality relationship with their new born child. Mr O'Connor said he was not aware of this but would be seek further details. The Chair suggested that consideration should be given to providing that support and facility for young parents.

Any Other Business

52. Nothing to note.

Next Meeting

53. The date of the next meeting is Monday 24th January 2022 at 4:15pm.