

## LORD CHIEF JUSTICE'S OFFICE

### Meeting with Political Party Representatives - Summary of Information 14 June 2019

#### CRIMINAL JUSTICE REFORM

##### **CRIMINAL JUSTICE BOARD (CJB)**

The Lord Chief Justice sits on the (CJB), chaired by the DOJ Permanent Secretary, Peter May, in the absence of a Minister for Justice, together with the Chief Constable, currently George Hamilton (Simon Byrne is his replacement) and the Director of Public Prosecutions, Stephen Herron. The CJB, as the main oversight group for the criminal justice system, has agreed a new Work Programme for 2019-20 with speeding up justice/reducing delay and responding effectively to the Gillen Review of the arrangements to deliver justice in serious sexual offence cases noted as priorities for the year ahead.

The **Criminal Justice Programme Delivery Group (CJPDG)**, which is accountable to the CJB and is made up of the heads, Chief Executives, or senior representatives of the main justice organisations, together with other cross-justice groups, will be responsible for delivering the Work Programme.

##### **Sentencing Group**

The key principles by which to judge the mechanisms of providing sentencing guidance to the judiciary in Northern Ireland are transparency, consistency and community engagement. The Lord Chief Justice established the Sentencing Group in November 2010 which includes the judiciary, legal academics and lay members. Lord Justice Treacy was appointed as Chairman in September 2017.

Since its inception in 2010, the Sentencing Group has, amongst other things:

- reviewed and streamlined the collection of Court of Appeal sentencing guidelines;
- created a mechanism for identification and publication of first instance sentencing guidance judgments in the Crown Court for crimes on which the Court of Appeal will have infrequent opportunity to issue guidelines;
- created a mechanism for the creation and publication of Magistrates' Court sentencing guidelines;
- identified and published 67 new Court of Appeal sentencing guidelines;
- identified and published 8 Crown Court guidance cases;
- created and published 126 Magistrates' Court guidelines;

- conducted a review of the Programme of Action<sup>1</sup>, and
- established links and information exchange with the Scottish Sentencing Council.

### **Substance Misuse Court**

The pilot of the Substance Misuse Court commenced at Belfast Magistrates' Court in April 2018 under the leadership of PDJ (MC) Bagnall. The pilot is part of the 'problem solving approach' led by the DoJ which puts District Judges at the centre of rehabilitation. The court works with individuals whose offending behaviour is driven by drug and/or alcohol misuse. The Substance Misuse Court Programme focuses on interventions which target factors that lead individuals to crime. The progress of the participants is reviewed and monitored by the Court to ensure they are engaging with the Programme.

### **Enhanced Combination Orders**

The Enhanced Combination Order (ECO) pilots which commenced in the Ards and Armagh & South Down court divisions in October 2015, were commenced in the North West in October 2018. To date over 400 people have received an ECOs as an alternative to a short prison sentence of 12 months or less. The pilots have been independently evaluated by NISRA (2017 & 2019) and by the Economic Policy Centre at Ulster University (May 2019). All three evaluations have identified significant benefits to individuals, families and communities, and have been shown to represent excellent value for money.

The judiciary are supportive of this initiative and would hope that ECO's are rolled out to all court divisions with adequate resourcing over the next 2-3 year period, to ensure individuals throughout NI have the same opportunities to transform their lives and positively contribute to their families and safer communities.

### **Increase in jurisdiction of the magistrates' court**

In his letter to Nick Perry of 12 October 2017, the Lord Chief Justice identified a number of potential benefits in increasing the jurisdiction of the magistrates' court, including:

- speedier case progression
- better use of a professional, highly skilled cadre of judges
- alignment with other proposed reforms (problem-solving courts, GAP/NGAP courts, traffic courts, etc.)
- additional capacity in the county court that would facilitate the implementation of an increased jurisdiction for that tier as well as civil and family justice hubs
- cost savings as a result of lower legal aid costs; earlier guilty pleas; and fewer juries, committal proceedings and cracked/ineffective trials.

We have raised this suggestion with the Department and understand they are developing options.

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<sup>1</sup> The Lord Chief Justice's Programme of Action on Sentencing is a 'rolling' programme with topics being removed when appropriate guidelines have been issued; and topics being added where the Lord Chief Justice considers it appropriate to do so.

## **Crown Courts Case Performance Groups (CCCPG) – Indictable Case Process**

Judge-led collaborative **Crown Court Case Performance Groups (CCCPG)** were created in March 2019 across Londonderry, Belfast / Antrim and Craigavon / Newry regions. The groups include PSNI, PPS, NICTS, OLCJ, DOJ and defence lawyers. They will tackle and report on local and common issues to the Criminal Justice Board.

A key issue for the CCCPG is the **Indictable Case Process**. Judges are concerned that Committal Reform has stalled given the need for new legislation. In its absence, the Indictable Cases Process (ICP) was implemented (May 2017) following a successful Pilot in the Division of Ards. It currently applies to four offence types: serious assault cases; serious drugs cases; murder/manslaughter cases and conveying a ‘list A’ article into or out of prison. The ICP approach requires enhanced early engagement between the PPS and PSNI at key points, together with the other criminal justice organisations, to improve the quality and timeliness of the investigative stages.

## **Crown Court Liaison Committee (CCLC)**

The Crown Court Liaison Committee (CCLC) at which the judiciary, Law Society and Bar are represented was re-instated in December 2018: *“to advise the Lord Chief Justice on the effective operation of the criminal courts, in particular on measures to improve judicial case management and to reduce avoidable delay, whilst ensuring the proper administration of Justice.”*

The CCLC has agreed three key areas of interest:

1. How to deal with vulnerable witnesses in sexual offences cases;
2. Expert Evidence and how to deal with the issue of delay, and
3. Third Party Disclosure.

A Crown Case Management Practice Direction, with Vulnerable Witness and Defendant protocols, is well progressed for issue before the new term, and in conjunction with appropriate training will undoubtedly go a long way in effecting the culture change necessary in how serious sexual cases are dealt with in the courts.

## **Commissioner for Older People (COPNI)**

In May 2019, COPNI launched their report on [‘Crime and Justice: The experience of older people in Northern Ireland’](#) and the Recorder spoke of his experience dealing with older victims of crime. The recommendations in the report that criminal justice agencies should engage in regular discussions with older people who have been the victims of crime, and that where appropriate judges should take some part in these groups have been endorsed.

## Gillen Report into the law and procedures in Serious Sexual Offences

The [Gillen Report](#), which was launched at the Criminal Justice Board (CJB) meeting on 8<sup>th</sup> May 2019, makes 253 [recommendations](#) which are grouped under 16 main headings. There are over 60 recommendations which concern the judiciary, or have an impact on the judiciary - essentially better case management, judicial training, restricted access to serious sexual offence trials, and appropriate cross examination, including introduction of pre-recorded cross-examination.

The CCLC will address a number of the recommendations within this Report. Sir John Gillen's Report also makes two specific recommendations relating to the successful 'Barnahus system' with the Children's Commissioner describing the project as "*as close to an ideal system as we have seen*" and she is to meet the Chief Justice to discuss its potential in this jurisdiction. Responses were extremely positive about the possibilities of a similar system to 'Barnahus' being invoked for children in Northern Ireland.

The DoJ has established a [Sexual Violence Reduction Group \(SVRG\)](#), that will report to the Criminal Justice Board and the judiciary will be represented on that group through their officials. Workstreams include the identification of opportunities to streamline current arrangements, and collective agreement on the key priorities.

### Proposed Pilot to fast-track serious sex offence cases involving child witnesses under 13 years of age

At the NSPCC Young Witness Service conference on 29<sup>th</sup> March 2019, Her Honour Judge Smyth gave a presentation '**Let's see what we can achieve without extra resources**' to address the inordinate delay occurring in serious sex offence cases involving child witnesses by ensuring that these cases are prioritised across the whole justice system.

Since that date, all key parties have engaged to consider the procedures and potential within each criminal justice organisation, including defence legal representatives, for a pilot to expedite cases involving children under 13 years of age, which it is hoped can be launched in Belfast in September 2019.

The Young Witness Service is also part of the working group to share their experiences and how remote evidence and examination, including off-site such as their premises in Londonderry, can be best used to put the child at ease, and ensure they can give their best possible evidence.

## CIVIL AND FAMILY JUSTICE REFORM

### SHADOW CIVIL JUSTICE COUNCIL & SHADOW FAMILY JUSTICE BOARD

The Lord Chief Justice and Lord Justice Gillen launched the reports from a major review of the civil and family justice systems on 5<sup>th</sup> September 2017. In the absence of Ministers, the Lord Chief Justice agreed with the Permanent Secretaries of the Department of Justice and the Department of Finance that a shadow Civil Justice Council (sCJC), and shadow Family Justice Board (sFJB), should be established as an interim step.

It was agreed that the remit of the sCJC and sFJB is to:

- oversee the co-ordination of a draft plan for the implementation of the recommendations of the Civil and Family Justice Reports;
- make proposals on which of the recommendations should be prioritised, taking account of available resources;
- engage with incoming Justice and Finance Ministers on matters relating to their responsibilities; and
- identify potential “quick wins” that could be taken forward in the short term.

**Up-to-date progress on the work of both shadow bodies can be found in the minutes published at <https://judiciaryni.uk/civil-and-family-justice-review>**

Some Judicial- led reforms include:

#### **Commercial Hub ([CJR Chapters 17 & 19](#))**

The Commercial Hub commenced operation on 29 April 2019. The new hub operates as a business court dealing with all forms of commercial dispute and will comprise several judges working across the areas of commercial and chancery law, judicial review and ancillary relief. Features that underpin the operation of the new hub include: early case management, appropriate considerations of alternative dispute resolutions and early neutral evaluation.

#### **Centralised civil and family hearing centres (CJR Chapter 16)**

Allocation of general civil business to the county courts jurisdiction is in accordance with the provisions of the County Courts (Northern Ireland) Order 1980. Allocation of such appropriately placed business (i.e. listing) is for the judiciary. Section 12(1B)(d) of the Justice (NI) Act 2002 bestows on the Lord Chief Justice (LCJ) responsibility for “*the maintenance of appropriate arrangements for the deployment of the judiciary of Northern Ireland and the allocation of work within courts.*” Section 13 of the Justice (NI) Act 2002 permits the LCJ to “*delegate any of his functions relating to the county courts to the Presiding county court judge.*”

The structure of county court business has generally followed local government boundaries. Local government in Northern Ireland was reorganised on 1<sup>st</sup> April 2015 with the creation of eleven new councils. After the implementation of the new single jurisdiction on 31<sup>st</sup> October 2016, three administrative divisions were created which were more aligned with Local Government Districts.

Judge McFarland, together with Judge Devlin, assigned as Civil Judge by the Lord Chief Justice, undertook a short pilot to examine if greater efficiencies would be achieved by concentrating judicial and staff resources, in a civil hearing centre. Following the success of the pilot, Armagh Civil Hearing Centre was created in December 2017 to hear all ordinary civil bill business which spanned across administrative division boundaries. This was expanded to include Equity business from 1<sup>st</sup> December 2018.

As recommended in Chapter 16 of the Review, Judiciary are continuing to consider proposals to centralise the hearing of all civil bill business within up to four Civil Hearing Centres; and to consider more effective case management within three or four Family Hearing Centres which may be aligned with Health and Social Care (HSC) trust boundaries for both public and private law cases, with court children's officers based in trust areas. While NICTS are developing their future estate strategy, as part of the 'Courts 2020' Review, which will be widely consulted upon, the judiciary are considering extending the hearing centre concept through pilots to help test and inform any future arrangements.

#### **Open Justice [FJR Chapter 18] – judicial led Media Pilot.**

Proposals are being developed in line with the recommendations for a 'Media In Court' Pilot, to permit media to access and report on some family cases heard before the senior Family Judge in the High Court. A 'Proof of Concept' phase launched in November 2018 to allow limited media access to the senior Family Judge's court, which is ongoing. A sub-committee including legal and media representatives, has been progressing work on proposals which will be the subject of a targeted consultation over the summer with a view to launching the pilot in the new term. The lessons learned from the pilot in the Family Division of the High Court should be used to inform future policy on Open Justice in the wider family courts.

**Problem-solving courts** [FJ97 -99] – judiciary involved in Substance Misuse Courts, the Domestic Violence Perpetrators Programme and the Family Drug & Alcohol Court.

- the **Substance Misuse Courts** are noted above.
- The Domestic Violence Perpetrator Programme launched in Londonderry last March but concluded due to the low level of referrals – there was deemed to be 'insufficient carrot' as the successful completion of the programme would not override a conviction accepted. Funding has instead been diverted to deal with such issues prior to reaching the criminal justice system by extending an alleged perpetrator behavioural change programme run by PBNI.

- The Family Drug and Alcohol Court (FDAC) (FJ97, FJ99) pilot closed to new entrants in November with fourteen families having entered the programme. Treatment plans have concluded in all but one case. To date, five cases have been disposed by the court with a further nine ongoing. The Board was initially advised that funding was being sought to enable the pilot continue for a further year with a view to enhancing the evidence base and better informing decisions on sustainability. Unfortunately the Departments were subsequently advised that the Trust could not commit and source the necessary professional staff resource to the project in 19/20. It is now proposed that the evaluation be used to inform consideration of the necessity and viability of a second stage pilot at a later date.

### **Voice of the Child & Vulnerable Adults [FJ125-133]**

- Judicial training events have been held to provide family judges with an improved insight into communicating with children and young people who are the subject of proceedings before them. Training events have also been held or planned for both the Judiciary and Legal Profession in 'Signs of Safety in child protection' in conjunction with the DoH and Safeguarding Board NI.

## **LEGACY INQUESTS**

Mrs Justice Keegan, the Presiding Coroner, on Friday 7th June, listed the outstanding legacy inquests in the Royal Courts of Justice, Belfast. The purpose was to provide an update on the work that is being taken forward by the Legacy Inquest Unit to progress the legacy inquests following the announcement that funding is being provided to implement the Lord Chief Justice's plan. We are now in Year Zero. Year Zero is being used to put into place the structures and processes necessary in order that delivery of the five year plan can begin in April 2020, which is the start of Year 1. It is understood that all organisations involved in legacy inquests are putting in place appropriate structures and arrangements to support delivery of the five year plan.

Mrs Justice Keegan spoke about the review she is leading to follow up on the work undertaken by Lord Justice Weir when he carried out a comprehensive review of the legacy cases in February 2016. She announced that she intends to carry out preliminary hearings in each case in September 2019 to establish the state of readiness and to consider the approach that may be taken in relation to the sequencing of inquest hearings. The legal representatives for the families and the relevant agencies have been asked to provide an update on each case to the Presiding Coroner in advance of these hearings.

The Presiding Coroner said she is keen to ensure that legacy inquest cases are prepared for hearing expeditiously and that disclosure issues are identified early and, through collaboration and dialogue, that reasonable and proportionate solutions are found.

To take the work forward a draft case management protocol has been developed, it will be further consulted upon and then used as a framework for disclosure in all legacy inquests. A single point of contact has been established as a means of strengthening disclosure arrangements, avoiding delay and improving communications. Also a draft Witness Protocol is being finalised that will apply to the range of witnesses who appear in the inquests be that bereaved families, civilian, police or military witnesses.

### **NON-MINISTERIAL DEPARTMENT (NMD) (CJR Chapter 26)**

The concept of an NMD was included in the Review so that it could be considered alongside other proposals for structural reform, such as the creation of a Civil Justice Council and a Family Justice Board. It is important for there to be coherence in how these structures interrelate.

The LCJ has previously set out how the implementation of a NMD would enhance the governance and accountability of the justice system. Experience in other jurisdictions, such as Scotland and the Republic of Ireland, have shown that greater involvement by judiciary positively facilitates the management of court business.

A Judicial Executive Group has been established, which has met on four occasions, to help shape how an NMD would operate in this jurisdiction, drawing on the experience elsewhere. The Group has been briefed by the Chief Executive Officer of the Courts Service of Ireland and the Chief Executive of the Scottish Courts & Tribunals. The Judicial Executive Group has the potential to transform into a shadow board if and when agreement on an NMD is achieved.