THE BAR of NORTHERN IRELAND

Review of Civil and Family Justice: Draft Report on Family Justice

Bar Council – Consultation Response

Introduction

1. The Bar Council is the representative body of the Bar of Northern Ireland. Members of the Bar specialise in the provision of expert independent legal advice and courtroom advocacy. Access to training, experience, continual professional development, research technology and modern facilities within the Bar Library enhance the expertise of individual barristers and ensure the highest quality of service to clients and the court. The Bar Council is continually expanding the range of services offered to the community through negotiation, tribunal advocacy and alternative dispute resolution.

2. The Bar Council welcomes the opportunity to contribute to the consultation on the preliminary family justice report emanating from the Review of Civil and Family Justice. We appreciate the engagement to date through the Review Group under the chairmanship of Lord Justice Gillen as this has enabled the Bar to contribute to the recommendations from an early stage, shaping the future of family justice in Northern Ireland. In addition, the Review's family sub-group has provided an invaluable forum for the legal professions to provide assistance in examining the key themes and issues across the family courts.

3. The Bar is supportive of the broad aims of the review in terms of improving access to justice, achieving better outcomes for court users, creating a more responsive and proportionate system and making better use of available resources. We appreciate that the last substantive review of family justice system in Northern Ireland occurred in 2000 with the landscape in which the courts operate having changed significantly in the last 16 years. It is clear that there is an increasing demand for the quicker resolution of court business against a backdrop of a rapidly shifting and reducing level of legal aid provision and expenditure. However, the Bar has a number of concerns in relation to the report and the proposed recommendations.

General Observations

4. Firstly, we would question the evidence base for changes specific to Northern Ireland and the proposals contained within the report. It contains research aimed at supporting some of the recommendations, such as the "*one stop shop*" approach on the benefits of joined-up working between the courts, Government Departments and NGOs in addressing family issues. Despite this, the evidence base is lacking for a significant number of the suggested reforms. Many of the recommendations have no foundation or supporting analysis of the likely or predicted benefits, outcomes or unintended consequences of changes. A number also emanate from recent pilot projects or exploratory initiatives, the outcome and impact of which have yet to be tested or realised or the resulting impact on access to family justice analysed.

91 CHICHESTER STREET
BELFAST, BT1 3JQ
NORTHERN IRELAND

Email
judithmcgimpsey@barofni.org

victoria.taylor@barofni.org

Direct Line
+44(0) 28 9056 2132

Website:
www.barofni.com

5. The Family Bar believes that prior to systemic change, the need for change should be identified and such a process should seek to identify the current strengths in the system as well as highlighting the weaknesses. Current strengths can be improved upon and agreed weaknesses altered or changed to improve access to family justice.

6. Secondly, the Bar would query the financial cost and the ability to secure funding for such significant reforms, whether to the court structure, the provision of services or in regards to technology use and improvements. The Report does acknowledge this to a degree but in no way provides any detail on the cost implications of the various proposals or recommendation. The Bar would encourage the Department of Justice to provide an early indicative view on the financial viability of the recommendations and the likelihood of progression under the current mandate.

7. We note the comments that quantifying the cost of the proposals or anticipated savings from alternative approaches was beyond its remit. However, we believe that the context of proposed reductions to legal aid funding and changes to representation in the family court cannot be ignored. We note that the use of technology in other countries has occurred due to changes in funding for lawyers and that the increased use of technology has improved access to information about the family justice system. The same cannot be said for access to effective representation or indeed funding for preventative work by lawyers with a view to settling issues without requiring court action.

8. This direct link between reducing costs for representation and legal assistance from family solicitors in private family law is now recognised in England and Wales due to the fall in referrals to mediation from family solicitors. This has led to an increase in court applications by litigants in person. In the USA, more litigants in person resort to the court compared to those who have access to lawyers. The International Legal Aid Group on Civil Legal Aid in the United States, December 2015 concluded that the 'Justice Gap' in civil justice (including family justice) remains, despite the efforts to expand access to civil justice through technology and self help representation activities. They concluded that the fundamental problem remains - there are not enough lawyers available to meet the needs of low income persons for advice, brief service and full representation.

9. As proven by Chief Judge Jonathan Lippman, the former Chief Judge of the State of New York and the Chief Judge of the Court of Appeals who in his article, '*New York's Template to Address the Crisis in Civil Legal Services*'[1] noted the justice gap in New York between civil legal services (including family legal services), the reduction in resources leading to the increase in litigants in person from low income families and the resulting strain on themselves, their families, the courts and their communities. He noted the necessity of civil legal representation for the "*poor and*

[1] [2012] Harvard Law & Policy Review Vol 7 page 13- 29

91 CHICHESTER STREET
BELFAST, BT1 3JQ
NORTHERN IRELAND

Email
judithmcgimpsey@barofni.org

victoria.taylor@barofni.org

Direct Line
+44(0) 28 9056 2132

Website:
www.barofni.com

nearly poor to a functioning legal system and to the protection of equal justice for all."

10. Whilst discussing solutions, he identified that initially the Judiciary responded by working with the Bar to increase pro bono services. However it became clear that "*what was necessary to confront the problem head on was the unequivocal commitment of state government to fund civil legal services.*" In New York, they decided to prioritise resources to those that came to the courts seeking what he termed "*the essentials of life*" which included family stability and personal safety free from domestic violence."

11. The FBA believe that the issue of funding for representation in the family justice system cannot be ignored. Many of the suggestions regarding alternative methods to resolve family legal problems arose directly as a result of a lack of funding for representation and has led to self-perpetuating problems.

12. Thirdly, there is a question around the legislative will and societal attitude towards some of the reforms, particularly in relation to the legal framework for the operation of divorce proceedings. A number of the recommendations will require significant legislative changes which will take time and require approval from the Northern Ireland Executive. Therefore it is unclear whether the report recommendations will have any influence in terms of the Programme for Government, departmental or statutory work programmes and whether they are achievable in the short to longer term.

13. Fourthly, we are concerned that this report represents a further programme of reform for the justice system in Northern Ireland. There has been no consideration of how the recommendations overlap, duplicate or replicate ongoing projects stemming from the first Access to Justice Review in 2011 or the outworking of the Access to Justice Review 2 from 2015. This highlights that there has been little in the way of strategic direction and stability in this sector over recent years. Consequently, we are concerned that the draft family justice report only adds more recommendations for reform into an already crowded arena which is hampered by significant budgetary restraints.

14. The Bar's response to the report is structured according to our comments on each of the substantive proposals outlined in the chapters contained in the document.

Chapter 3: The Current System

15. These paragraphs do not necessarily reflect the practice of many family barristers. In our experience, review hearings are only directed by the High Court or the Family Care Centre Judge if deemed necessary for case management reasons or if there is an emergency. Agreed applications to vacate hearing dates or review dates are regularly undertaken by consent via correspondence such as letter or email to

91 CHICHESTER STREET
BELFAST, BT1 3JQ
NORTHERN IRELAND

Email
judithmcgimpsey@barofni.org

victoria.taylor@barofni.org

Direct Line
+44(0) 28 9056 2132

Website:
www.barofni.com

the High Court or Care Centres. A review is only listed if the Judge with management of the case does not agree with the reasons forwarded by all the parties. Guardian ad Litems are regularly excused from attending court reviews especially if the review relates to listing. Social workers attend review hearings so they can instruct Counsel or Solicitor as to the latest event. Counsel for the Trust may ask for pre-review hearing consultations to prevent social workers from attending; however, this can prove difficult for social workers to facilitate.

16. It is accepted that the same practice of contacting the court office in relation to the FPC hearings may not be as prevalent as in the Higher Courts but we believe that this is an area that could be investigated. Suggestions that social workers appear via video link/skype/telephone may be unnecessary if instructions were provided before the review hearing. If this cannot be accommodated before the review hearing, delay may be introduced within the court system if counsel has to first take instructions via telephone/skype/Video link. The latter proposal presupposes that all methods of IT are compatible and that all involved can readily access skype and video link compatible with the courts. Furthermore the security of these systems must be robust. Effective engagement in difficult problem solving at a review hearing is more common when counsel engages with the professional face to face rather than over a telephone line.

17. The current system is seeing an increase in litigants in person in family proceedings, particularly private family proceedings which must be taken into account when reviewing the current system. Issues which previously were agreed between counsel or solicitors are not being agreed with the litigants in person as they may not understand what is being suggested or simply refuse to engage in case management discussions and will wait until the matter comes to court. This problem is most acute in the Family Proceedings Court.

18. The FBA do not recognise the suggestion that the lawyers take the lead in deciding the issues. As a result of the public law outline in particular and the Initial Analysis Report by the GAL, issues that are agreed and not agreed are very quickly brought to the attention of the court at the case management review hearing after the report is lodged with the court. If assessments are identified, the legal teams immediately set about ascertaining the identity of agreed experts or assessments within their timescales for the next court review. Issues that are in dispute including the nature of assessments are addressed at the review hearing and any application for an expert is made in the context of whether it is necessary or not and not whether it is reasonable or may be of some assistance. The initial analysis report prepared by the GAL provides the court with an overview of the case and on occasions, the Judge will address issues not considered necessary by the lawyers and will manage the case accordingly.

19. We acknowledge that the transfer system may not work as efficiently as it once did. There is a minority of cases that remain in the FPC for a considerable period of time

91 CHICHESTER STREET
BELFAST, BT1 3JQ
NORTHERN IRELAND

Email
judithmcgimpsey@barofni.org

victoria.taylor@barofni.org

Direct Line
+44(0) 28 9056 2132

Website:
www.barofni.com

before being transferred. This can be solved by effective implementation of the COAC Best Practice Guidelines and additional training. It is of note that some jurisdictions in Northern Ireland will transfer a care application to the care centre once a care plan of freeing is determined to ensure that the freeing application may then be lodged and both cases consolidated, hence accelerating those applications.

20. Parallel planning is a matter which some Trusts undertake very successfully and others may lag behind. Further investigation and research is required as to the reason for different approaches within the Trusts regarding this issue as it may be a policy decision or resource led, so regardless of the court structure, the same problem may arise.

21. The FBA cannot comment on the structure of communication between family judges nor the training that they are provided by the Judicial Studies Board. It is our experience that newly appointed judges are adept in the workings of the family justice system with guidance available from fellow judges and practitioners. Unrecorded internal communications between Judges of a different tier regarding particular cases may prove problematic regarding Article 6 rights to a fair hearing.

22. The FBA do not accept the generalisation that proceedings relating to children take too long and the system is riddled with avoidable delay. We are not just referring to the idea of "purposeful delay". If compared to England and Wales who now work towards a 26 week timescale for care proceedings, then on many occasions, it will take longer in Northern Ireland but as yet we have not seen qualitative reports on the impact of this change regarding access to effective family justice. We note that quicker proceedings could lead to an increase is post care order litigation and therefore increased expense and is worthy of investigation. We also note that by comparison, England and Wales have more front loaded services provided before proceedings are initiated and this is a question of resources within the Department of Health.

23. All court proceedings take place in court buildings that have other courts ongoing. Previous practice was that family reviews were listed first before criminal proceedings in a mixed list. It is our experience that there are now very few mixed lists throughout Northern Ireland, excepting an emergency. Delay has crept into some courts outside Belfast as they may only sit once a week or once a month rather than every day.

24. We are concerned that some of the recommendations arise from civil legal systems that are inquisitorial in nature rather than adversarial and therefore more emphasis is placed on the role and work of the family judiciary. Given current pressures within the court service budget and the limited number of family judges with fully trained support staff, we question the cost of many of the recommendations on Court Service.

91 CHICHESTER STREET
BELFAST, BT1 3JQ
NORTHERN IRELAND

Email
judithmcgimpsey@barofni.org

victoria.taylor@barofni.org

Direct Line
+44(0) 28 9056 2132

Website:
www.barofni.com

Chapter 4: The International Context

The relevant Executive Department or the new Family Justice Board to commission an in-depth study of the systems that operate in Scotland and Guernsey to establish the pros and cons of their Child Youth and Community Tribunal care system. [FJ1]

25. The Bar is not in favour of steps being taken towards the introduction of the systems that operate in Scotland and Guernsey in respect of the Child Youth and Community Tribunal care system. Whilst we acknowledge that this recommendation currently involves the commission of an in-depth study, there are already serious problems with the concept of such a model potentially operating in Northern Ireland. There is no existing evidence base or research quoted in the report to show the rationale for such a system here with only the comment offered at paragraph 4.12 that "*there is no reason why we should be merely late followers of that which emerges in our nearest neighbours*". Therefore we must conclude that no research currently exists on the short, medium or longer term impacts in these jurisdictions to support the suggestion that they represent best practice for dealing with serious public children law proceedings involving the welfare of young people.

26. Furthermore, paragraphs 4.10 and 4.11 of the report explain how the system operates in Scotland and Guernsey. We note that this states that the "*CYCT is a tribunal made up of three law members who are chosen from the community and appear voluntarily*". However, the Bar believes that this should read "lay" instead of "law". The website of Guernsey's Child Youth and Community Tribunal highlights that hearings involve three volunteer lay members from a range of backgrounds in the local community. It states that tribunal members do not need any formal qualifications and a "*real interest in children and young people and a commitment to improve their lives*" will suffice. These individuals are not legally trained or from a social work background yet are dealing with a multitude of serious care issues relating to children.

27. The Bar is not convinced that such a collection of members will be able to ensure a human rights compliant approach to public law children proceedings, particularly given that legal representation is typically not permitted at this stage in the process in Guernsey. Meanwhile in Scotland legal representation is only allowed where the panel considers it necessary to allow the child to participate effectively in the proceedings. This contrasts with the current system in Northern Ireland under which representation of both the child and parents in automatic. The Bar is entirely opposed to any efforts to deny legal representation and access to justice to parties involved in care proceedings. Adoption of such an approach could have the consequence of denying access to justice for precisely those families which will be most affected.

91 CHICHESTER STREET
BELFAST, BT1 3JQ
NORTHERN IRELAND

Email
judithmcgimpsey@barofni.org

victoria.taylor@barofni.org

Direct Line
+44(0) 28 9056 2132

Website:
www.barofni.com

28. Consequently, the Bar believes that the Child Youth and Community Tribunal care system does not offer the same level of protection in serious cases given that decision making rests with a lay panel under which the right to legal representation is not guaranteed for the parties involved. The Bar fails to see how the report's recommendation for an in-depth study of such a flawed system would ultimately improve care proceedings in Northern Ireland's courts. Commission of such an in depth study in the face of such flaws would be a wasteful expenditure of limited resources

29. The Northern Ireland Programme for Government aims to improve the outcomes for looked after children. The courts play a pivotal role scrutinising the care plan which looks at the placement, education and health needs and how these needs are being met at the time of the care application. The courts do ensure that gaps are addressed before approving the care plan. This scrutiny assists with improving outcomes for looked after children

Close monitoring of developments in the Rechtwijzer system of online dispute resolution in Holland and British Columbia relevant to the family justice system, supervised by the Family Justice Board. [FJ2]

30. The FBA is aware of the online mediation system developed in the USA by Colin Rule of Modira.Com which was first developed to assist with disputes with eBay. This was extended to include other disputes and they formed Modira, which stands for Modular Online Dispute Resolution Implementation Assistant. As a direct result of the recession and the desire to reduce public funding for civil legal aid, the Dutch engaged with Modria.Com to introduce "Rechtwijzer". In particular it was utilised for family disputes and later trialled in British Columbia.

31. In the Netherlands, the Rechtwijzer replaces the role of the Advocaat as the first port of call for a citizen, which aims to assist them in identifying a legal problem and where necessary they are directed to an appropriate person or organisation for further assistance. This is normally an Advocaat. The programme developer Colin Rule acknowledged that the system is not intended to be computer generated algorithms to replace mediators. He acknowledged that "human neutrals" are still required by arranging for online "trialogues". He further acknowledged that not every dispute is suitable for online resolution.

32. The Rechtwijzer 1.0 (as opposed to 2.0 which began in February 2015) was evaluated by the University of Twente according to the Netherlands Legal Aid Brochure – 2015. The website was rated highly amongst users. However, the effectiveness of the Rechtwijzer is not known regarding the nature of agreements

91 CHICHESTER STREET
BELFAST, BT1 3JQ
NORTHERN IRELAND

Email
judithmcgimpsey@barofni.org

victoria.taylor@barofni.org

Direct Line
+44(0) 28 9056 2132

Website:
www.barofni.com

reached between parties without seeing a mediator or being referred to a lawyer, the longevity of the agreements reached, whether it has reduced the number of legal proceedings brought in the family courts, whether it has produced savings in public funding.

33. We are unclear as to the provision within the process for children or those who are not literate, computer literate or Dutch speaking. We understand that there is an attempt to "unbundle" the legal services provided by lawyers. We note that in the papers from the USA, they could not source available research into the effectiveness of "unbundling".

34. The online proposal is seen as assisting those individuals who have straightforward cases. The creators noted that these appeared to be the cases where mediation succeeded. We agree that many separations do not enter the judicial system. With good legal advice and collaborative work undertaken by solicitors and counsel, these relatively straightforward cases are dealt with efficiently. However, provision must be made for non-straight forward cases which will require the intervention of the Courts.

35. The Bar Council notes the developments in British Columbia and the Rechtwijzer project. The report acknowledges at paragraph 4.5 that this initiative "*is very much a work in progress*" with "*careful peer reviewing and informed critical analysis*" still required at 4.14. There are also concerns that an online "click for divorce" system may be unpalatable to the legislature and society in Northern Ireland given that this is viewed as such an important personal and legal decision. Consequently, the Bar believes that much work would still need to be undertaken before any such system could be contemplated in Northern Ireland.

36. We note the comments at paragraph 4.7 that Rechtwijzer only presently offers mediation and adjudication services with a view to eventually providing other services, such as financial expertise, psychological help and children support. Given the potential application of the project we believe that a number of legitimate questions will require further consideration by the Family Justice Board or an equivalent before any monitoring of developments in other jurisdictions is undertaken. Can parties be incentivised to cooperate with the system? What role could the legal profession play in delivering value to individuals who need fair solutions? Can this system deliver a balanced and fair outcome if one party is at a disadvantage? How will difficult family cases involving coercion, child contact disputes and allegations of domestic abuse be catered for? What if one party does not honestly disclose their assets? Or if another party does not have access to the internet?

91 CHICHESTER STREET
BELFAST, BT1 3JQ
NORTHERN IRELAND

Email
judithmcgimpsey@barofni.org

victoria.taylor@barofni.org

Direct Line
+44(0) 28 9056 2132

Website:
www.barofni.com

37. The Bar Council strongly believes that a system of online dispute resolution will not be appropriate in all family cases. There are significant limitations inherent in the development of any online system given that only straightforward cases involving two parties willing to reach a settlement could realistically be catered for. In addition, the lack of face-to-face interaction also removes the opportunity to evaluate the credibility of parties, assess if there is an imbalance of power or assess if one party is applying duress over the other, or assess any child protection concerns. This lack of face to face mediation increases the potential for miscommunication in disputed cases. Consequently, there must always be a role for the courts to adjudicate on disputes when necessary.

Close monitoring of the "court of last resort" approach to problem solving courts in New Zealand and Australia. [FJ3]

38. The Bar does not agree with the "court of last resort" approach in New Zealand and Australia. The introduction of a similar mandatory Family Dispute Resolution service will not be appropriate in every case and the courts must always be able to play a role in settling family disputes. We are concerned that this approach only adds an extra layer of cost when it does not work and delays the achievement of a binding legal outcome or determination in the courts.

39. In addition, there is no reference in the report to any research which adequately demonstrates that this approach is actually effective in helping parties to reach agreement. Appendix three highlights that the system in New Zealand still requires appropriate evaluation and therefore it is not possible to determine the success of reforms introduced in 2014. Meanwhile in Australia reference to an evaluation project from 2009 noted the cost saving benefits of the reforms but also highlighted significant downsides to FDR in complex cases with clients expressing concerns around violence, safety, abuse, mental health problems and substance misuse.[2] This research identified that parents with safety concerns did not believe that FDR effectively managed this and that allegations of harm involving domestic violence and child protection were being marginalised, ignored and rejected without existing external evidence[3]. This indicates that FDR may work for parents who are cooperative but not for those where there are complex issues, hostility or a lack of ability to negotiate and compromise.

91 CHICHESTER STREET
BELFAST, BT1 3JQ
NORTHERN IRELAND

Email
judithmcgimpsey@barofni.org

victoria.taylor@barofni.org

Direct Line
+44(0) 28 9056 2132

Website:
www.barofni.com

[2] Australian Institute of Family Studies, *'Evaluation of the 2006 Family Law Reforms'* (2009) at https://aifs.gov.au/sites/default/files/publication-documents/evaluationreport.pdf (last accessed 11 October 2016)

[3] Trinder L, Firth A and Jenks C, *"So Presumably Things Have Moved on Since Then?' The Management of Risk Allegations in Child Contact Dispute Resolution'*, Int J Law Policy Family (2010) 24 (1): 29-53

40. The Bar would point to additional studies in this area conducted more recently. Whilst research conducted on behalf of the Australian Institute of Family Studies[4] in 2013 highlighted positive developments in relation to "*cross-sector engagement between family lawyers and family relationship practitioners*" working in the 65 Family Relationship Centres across Australia, issues remain around the limits of FDR to deal with power imbalances involving dominating and controlling ex-partners with the importance of legal support being offered alongside dispute resolution also highlighted.[5] This indicates that a potential risk for unchecked exploitation during the mediation process by the party with greater bargaining power, typically the father, clearly exists.[6]

41. Analysis from New Zealand reinforces this issue with research from the Ministry of Justice in 2015[7] showing that a reasonable proportion of parents felt pressured to reach agreement during FDR. This also showed that further work needs to be done around the inclusion of the child's wishes in this process. There is also another problematic aspect to a major feature of the New Zealand reforms and this idea of the "court of last resort", namely mandatory self-representation in the early stages of Family Court proceedings. This means that people who take their mediated parenting agreement to the Family Court for formal recognition, or who would like a judge to help them reach agreement or make a decision for them, are not able to use a lawyer to file their documents or meet with the judge if required.

42. The 2015 Ministry of Justice research found that many parents were anxious about representing themselves well in court, especially as the outcome of the proceedings would be a care arrangement that would affect their day-to-day interaction and longer term relationships with their children. The courthouse and formal court protocols were unfamiliar territory for many of the parents which they found intimidating with many taking legal advice in advance where possible. There is no doubt that this arrangement could ultimately place one party at a disadvantage, particularly if they are unable to express themselves well or if an ex-partner has been able to access more legal advice in advance of the hearing.[8]

---

[4] Australian Institute of Family Studies, *'Separated families and access to the family law system: A research-informed holistic approach to the resolution and management of disputes over children'* (November 2013) at http://www.pc.gov.au/inquiries/completed/access-justice/submissions/submissions-test/submission-counter/sub101-access-justice.pdf (last accessed 12 October 2016)

[5] Carson R, Fehlberg B and Millward C, *'Parents' experiences of family dispute resolution and family law services in Australia following shared parenting reform: recent qualitative findings'*, C.F.L.Q. 2013, 25(4): 406-424

[6] Bagatol B and Brown T, *Bargaining in the Shadow of the Law: The Case of Family Mediation,* (Themis Press, 2011), pages 194-199

[7] Ministry of Justice, *'Evaluation of Family Dispute Resolution Service and Mandatory Self-representation'* (October 2015) at http://www.justice.govt.nz/assets/Documents/Publications/Evaluation-of-Family-Dispute-Resolution-Service-and-Manadatory-Self-representation.pdf (last accessed 13 October 2016)

[8] Von Dadelszen, P, *'Changes to family justice in New Zealand'*, I.F.L. 2014, Dec: 265-269

91 CHICHESTER STREET
BELFAST, BT1 3JQ
NORTHERN IRELAND

Email
judithmcgimpsey@barofni.org

victoria.taylor@barofni.org

Direct Line
+44(0) 28 9056 2132

Website:
www.barofni.com

Liaison arrangements to be initiated whereby a family judge from Northern Ireland will spend, say, three months in New Zealand or Australia attached to their Family Division and, thereafter, to report on what lessons can be learned and practices introduced into the family system in Northern Ireland. [FJ4]

43. This recommendation is not applicable to the Bar. However, we would like to know the rationale behind only these jurisdictions being selected by the Review Group. Whilst judicial liaison is good practice we urge caution that sole reliance on the judiciary from different countries may not provide a full picture of the impact of various pilot models or limitations to working practices. We would suggest that the use of online facilities for judicial liaison would be appropriate for this proposal.

The Lord Chief Justice to appoint a family judge with specific responsibility for keeping the judiciary and the legal profession up to date with family justice developments throughout the world. [FJ5]

44. The Bar welcomes this recommendation but query whether the updates could be provided by research assistants working for the Judicial Studies Board rather than an appointed Judge. We believe that such research would be a positive contribution in helping this jurisdiction informed about family justice developments elsewhere.

The family judiciary and the legal profession to be strongly encouraged to keep abreast of family justice case law and developments in other jurisdictions. [FJ6]

45. The Bar is content to accept this recommendation. It is worth noting the value which counsel derive from their membership of the Bar of Northern Ireland in being able to access the latest research, legislation, law reports and legal journals through the Library and Information Service. The library also offers a Family Law Current Awareness Service which allows practitioners to benefit from a weekly email bulletin which includes practice area specific case law and legislation alerts, journal abstracts and citations, relevant online news and other relevant information.

46. The Family Bar is aware of ongoing changes in other jurisdictions on particular areas of law as they conduct their research on a case by case basis. We are cognisant of the fact that what happens in other jurisdictions outside the UK can be helpful but we are acutely aware that one cannot impose on one jurisdiction a solution which suits the characteristics of court users in another jurisdiction or involves different court systems, and finally one system that may be better funded than another.

91 CHICHESTER STREET
BELFAST, BT1 3JQ
NORTHERN IRELAND

Email
judithmcgimpsey@barofni.org

victoria.taylor@barofni.org

Direct Line
+44(0) 28 9056 2132

Website:
www.barofni.com

47. In addition, the Bar Council has commenced a review of Continuing Professional Development with a focus on improving the quality of the training on offer to counsel. The Family Bar Association already supports the delivery of a variety of CPD events and training to ensure practitioners are kept abreast of family justice case law and developments in Northern Ireland and other jurisdictions. This includes the annual Family Four Jurisdictions conference. The Bar Council actively encourages counsel working in the area of family law to be members of the Family Bar Association to facilitate access to specialist training in order to maintain the highest possible standards of knowledge and skills across the membership. Many Family Bar Association training events are open to members of the Young Bar at either a discounted cost or no cost.

Chapter 5: A Single Tier System

The abolition of the equivalent Family Proceedings Court and Family Care Centre in Northern Ireland and the creation of a single family court, with the jurisdiction of the High Court preserved only for the most complex or legally sensitive cases. This will require legislation. [FJ7]

48. The Bar is strongly opposed to the creation of a single family court in Northern Ireland. The report provides no supporting evidence or research to suggest that this change would be appropriate and merely describes the operation of the single family court in England and Wales. However, this change was only introduced following the enactment of the Crime and Courts Act 2013. The structural changes have therefore had very little time to take effect with no evaluation of their impact undertaken to date. The report states at paragraph 5.5 that they are "*intended to reduce delays and ensure judicial continuity*". Whilst these are laudable aims, there is nothing in the report to suggest that the introduction of a single family court in England and Wales has actually achieved these reductions in delay or been a "*very positive development*".

49. The FBA note that prior to the introduction of the Single Tier Family Court in England and Wales, the family jurisdiction was vast and covered numerous courts at various locations whereas Northern Ireland has 11 Family Proceedings Courts and 4 Family Care Centres. We are not aware of any evidence that Northern Ireland has the same problem identified by Norgrove in England and Wales. We would request a breakdown of the associated costs for the restructuring, including additional support staff.

50. A more cost effective solution could be to review the Children (Allocation of Proceedings) Order 1996 whereby applications could be issued at a Court tier deemed most appropriate rather than cases commencing in the Family Proceedings Court. This was suggested by the Bar Council in our response to the first Access to

91 CHICHESTER STREET
BELFAST, BT1 3JQ
NORTHERN IRELAND

Email
judithmcgimpsey@barofni.org

victoria.taylor@barofni.org

Direct Line
+44(0) 28 9056 2132

Website:
www.barofni.com

Justice Review. We believe that some retraining on this order and the COAC Best Practice could be delivered to the Judiciary.

51. We have concerns that the responsibility for deciding which court tier should hear which application represents a new role for the Judge. Given the pressures on the Judiciary, this may not be realistic as a disproportionate amount of time will be required to deal with administrative issues.

52. We note that there can be a delay regarding a Court's decision to adjudicate on a transfer application. Again we stress that training is essential and we highlight the fact that an application can be made to the Care Centre if necessary, although the only venue available for a delay in the determination of transfer application from the care centre to the High Court may be by way of Judicial Review, save in applications under the Adoption (NI) Order. It is not our regular experience that there is a delay in transfer applications from the Care Centre to the High Court. Some cases can become more serious as the case progresses for reasons relating to the investigations or issues and are not foreseeable by the professionals working with the family rather than the court system itself.

53. We would also query the process for the entry of new cases into the single family courts and how these will be handled. Paragraph 5.5 highlights that the changes in England and Wales now allow cases to be allocated to the relevant judge with the assistance of a "*gate keeping team*". We would ask whether a similar structure is envisioned for Northern Ireland and if so, the likely cost implications of additional staff and administrative resources. It is unclear whether the members of such a team are lawyers or civil servants and whether this is a role akin to those of the Case Officers recommended by Briggs LJ in his Civil Courts Structure Review (published July 2016). These are court officials who receive some judicial training and supervision who are notionally assigned the more routine and non-contentious work carried out by judges. If this is correct, then this raises wider questions about the role of civil servants in quasi-judicial roles within the family justice system in Northern Ireland.

54. Furthermore, the Bar is very concerned at the potential cost of the creation of a single family court. Paragraph 5.9 of the report states that the single tier system could be implemented through the establishment of three of four Civil and Family Centres across Northern Ireland. However, the Bar fails to see where the funding for this initiative would be found in the already stretched court estate budget. Paragraph 5.7 even acknowledges that "*problems may arise in terms of the court estate*" with few multi-courtroom venues and poor facilities. The Old Townhall Building is even suggested as a possible venue but the Department has previously

91 CHICHESTER STREET
BELFAST, BT1 3JQ
NORTHERN IRELAND

Email
judithmcgimpsey@barofni.org

victoria.taylor@barofni.org

Direct Line
+44(0) 28 9056 2132

Website:
www.barofni.com

indicated that this is a highly unlikely option at present given that it would require a capital investment of £3.5 million.[9]

55. The Department would undoubtedly have to commission detailed research on the potential operation of single family court, developing an informed evidence base and providing an assessment of feasibility before any steps could be taken towards further consultation with stakeholders on the possible introduction of such a system. However, the Bar believes that efforts should instead be concentrated on making the existing structures in the family courts work more efficiently and effectively in dealing with cases.

Careful consideration must be given to the location of such venues, after wide consultation, to ensure true access to justice is maintained in terms of ability to travel to court. [FJ8]

56. The Bar does not agree with the proposed creation of a limited number of Civil and Family Centres across Northern Ireland. We consider that the very concept of the single family court is too Belfast centric in nature which presents a threat to access to justice for families living outside this area, particularly in rural regions. It is clear from the discussion at paragraphs 5.9 and 5.10 of the report that the preference is for aligning the establishment of a possible three or four Civil and Family Centres with the five Health and Social Care Trust areas. Whilst the ultimate location of these centres would have to be subject to further detailed consultation by the DOJ, the Bar is already very concerned that parents and children living in rural areas will be unable to travel to these venues easily without access to private transport.

Chapter 6: Private Law Proceedings

One Stop Shops: The introduction up of a "one stop shop" process at first directions hearings before Family Courts. [FJ9]

57. The Bar is in favour of a more co-operative and joined-up approach between the courts and the various Governmental and NGO multi-disciplinary bodies in the provision of support services such as relationship counselling, parent education, addiction or anger management support and debt counselling as listed in paragraph 6.3. It is worth noting that Counsel already play an important role in directing clients towards therapeutic services where appropriate in many cases and on many occasions, direct instructing solicitors to ascertain available services in the court

[9] Department of Justice, *'Rationalisation of the Court Estate: Further Consultation on Lisburn Courthouse'* (December 2015), paragraph 3.8, at https://www.justice-ni.gov.uk/sites/default/files/consultations/doj/further-consultation-on-lisburn-courthouse.pdf (last accessed 11 October 2016)

91 CHICHESTER STREET
BELFAST, BT1 3JQ
NORTHERN IRELAND

Email
judithmcgimpsey@barofni.org

victoria.taylor@barofni.org

Direct Line
+44(0) 28 9056 2132

Website:
www.barofni.com

jurisdiction before the first directions hearing, provided Counsel are instructed in a timely fashion The FBA believe when either the public law outline or private law outline are applied, most first directions hearings do indeed begin to identify resources and assessments needed to assist the family. In other cases with disputed facts, e.g. domestic violence or non-accidental injuries or allegations of sexual abuse, the Court may have to direct fact finding hearings before such resources are identified but given the issue of waiting lists for many of these resources whether funded by the Department of Health or NGO's, the FBA believes that referrals should be made in a timely fashion but urge caution as to the details provided in the referral if there are issues which require determination by the Court first.

58. There is also mention at paragraph 6.10 of the recommendation in Access to Justice 2 for "*Early Resolution Certificates*" as working within the "*spirit of the one stop shop concept*". The Bar disagrees with this suggestion as it remains unclear what these certificates are intended to address or the rationale behind the proposed introduction of such a system.

The Department of Health and the Legal Services Agency to combine to fund dedicated services, with set fees, enabling the court to make referrals to services such as Children's Court Officer, mediation, and anger management service, drug and alcohol testing, housing and debt problems, contact centres, etc. [FJ10]

59. The Bar very much welcomes the suggestions for the introduction of an early intervention "one stop shop" process with services identified. However, we are concerned at the potential cost of this given the pressures presently being experienced by professional support services working with parents to address dysfunctional relationships and enhance family wellbeing. Many of the services such as parent education, debt counselling and addiction support provided in the community by Trusts and NGO groups are already significantly overstretched with long waiting times in place. These services are simply overwhelmed by the current number of referrals and counsel often find that the availability of a first appointment cannot meet the timeline set by the court for a case to be resolved. We cannot ignore the pressures already on the Department of Health and the individual trusts with regards to funding health services or the pressures faced by Department of Justice when it comes to funding legal services.

60. The report goes on to reference the need for funding to come from across Government Departments with mention in paragraph 6.10 of how this work will contribute to a number of strategies for children and young people emanating from the Department of Health, the HSC Trusts and the Department of Justice. The Bar agrees that a "one stop shop" concept could assist in furthering this work but we would query the likelihood of securing both funding and cross-departmental

91 CHICHESTER STREET
BELFAST, BT1 3JQ
NORTHERN IRELAND

Email
judithmcgimpsey@barofni.org

victoria.taylor@barofni.org

Direct Line
+44(0) 28 9056 2132

Website:
www.barofni.com

working for these services given the pressures currently being experienced across Government. Further scoping work would be required into the costs associated with these dedicated services but it seems unlikely that the Department of Health and the Legal Services Agency alone could commit to such an outlay in the current economic climate We urge caution that if resources are made available for such services that persons who are engaged in the court system could be given priority over other members of the public who are not engaged in the court system.

All Family Justice practitioners, judiciary and court officers be given training in what services are thus at the court's disposal. [FJ11]

61. The Bar agrees with this recommendation as it would be beneficial for family practitioners to receive information on the services available to access within a Trust area and within Northern Ireland. A directory of services for the purposes of the family courts would prove useful.

Wherever possible, representatives of such services to be available for court hearing days, either online physically in court. [FJ12]

62. The Bar is content to agree with this recommendation subject to the provision that all software used is compatible or that attendance at court is only deemed necessary by the court as currently the Trust or indeed the GAL can provide the court with the necessary information and timescales. The FBA has experience of the Children's Court Officer, who represents the Trust at Court occasionally making suggestions which later are not achievable due to a funding issue or a cross Trust issue. This can unravel an agreed way forward.

Such dedicated services to agree set fees for this work (in liaison with the LSA and the trusts) and consideration could be given to automatic legal aid or trust authority if the court so directs. [FJ13]

63. This recommendation is not applicable to the Bar unless the Department of Health and Department of Justice have agreed to this extra funding. Automatic legal aid authority and trust authority if the Court directs that service would be helpful and decrease delay. We urge caution as this may not be achievable given resource issues within Trusts and within LSA.

Steps to be taken to recognise the real value of CCOs and to ensure they are adequately resourced. [FJ14]

91 CHICHESTER STREET
BELFAST, BT1 3JQ
NORTHERN IRELAND

Email
judithmcgimpsey@barofni.org

victoria.taylor@barofni.org

Direct Line
+44(0) 28 9056 2132

Website:
www.barofni.com

64. The Bar agrees that Child Court Officers provide an invaluable service which should be adequately resourced across the family court system. Counsel often witness the important work these officers carry out through conciliating disputes, providing their opinion to the court as to what may be in the child's best interests and the provision of an important link-in service with local child contact centres in a particular area. In practice due to resource issues there can be a variation in service provision by the CCO within different Trust areas. However, the proper resourcing of CCOs will ultimately be a decision for the Department.

Contact Breakdown: The introduction of a fast track, priority driven triage system for cases where contact has broken down. [FJ15]

65. The loss of contact between a parent and child should have the urgent attention of a court. Family law practitioners highlight that cases involving contact breakdown frequently come before the Family Proceedings Court. The development of a fast track, priority driven triage system to deal with these cases would be welcomed by the Bar.

66. We are concerned that parents who have had their contact drastically reduced or subject to disproportionate restrictions by the parent with care could face further delay if the contact cases with a total breakdown are given priority. We would query the research into the proportion of cases which enter the system due to a total breakdown in contact as opposed to difficulties with the contact plan. The unintended consequence of fast tracking applications would be an adverse incentive to the parent with care who deliberately stops contact as opposed to facilitating some form of contact. It should be considered how such a triage system would be managed and how litigants in person will fit within the system.

The Legal Services Agency (LSA) to introduce appropriate arrangements to facilitate this prioritisation. [FJ16]

67. Whilst this recommendation is targeted at the Legal Services Agency, the Bar believes that any new arrangements to facilitate prioritisation in contact breakdown cases would need to be developed in consultation with all stakeholder groups including the Family Bar Association.

Such applications to be available with an online template, albeit hard copy service might still be necessary where the respondent did not have online access. [FJ17]

91 CHICHESTER STREET
BELFAST, BT1 3JQ
NORTHERN IRELAND

Email
judithmcgimpsey@barofni.org

victoria.taylor@barofni.org

Direct Line
+44(0) 28 9056 2132

Website:
www.barofni.com

68. The Bar takes the view that this recommendation presupposes the arrangements which the LSA will seek to introduce to facilitate the prioritisation of contact breakdown cases. We believe it is necessary to remain open to both online and hard copy options at present. This may not be effective if the parties are not computer literate or unable to readily access a computer. Provision must also be made for those who have literacy difficulties or require language support. Introducing a means of acknowledgement of service, either online or in hard copy, of proceedings is essential to prevent the Court determining an application without the awareness of a party.

69. If the issue is one of enforcement of an order, there must be hard copy service of the proceedings in all cases whether the Respondent is represented or not. This includes the service of the original order with the penal notice attached. Electronic service could be considered for represented parties who have given consent for their solicitor to accept service by email but hard copy service should remain in all emergency cases and enforcement proceedings.

Contact Centres: A protocol be drawn up to address the lack of understanding as to the precise role of contact centres by the parents and referrers whereby they think this is a final order. [FJ18]

70. The Bar acknowledges the valuable role the contact centre has in ensuring children have contact with their parent without care. The Bar agrees with this recommendation and believes that it would be useful for such a protocol to be drawn up to provide parents and referrers with greater clarity on the role of contact centres. The inclusion of the matters outlined in paragraph 6.24 for the protocol seem sensible. However, we would stress the need for the protocol to be as short and clear as possible in order to ensure that it is accessible for the users of the contact centres.

71. We appreciate that contact centres do not represent the final solution. What happens if the Contact Centre is used for the duration of a parent's effective engagement with a service? Should the Court make a final order? If this happens, the onus may be on one parent to engage in whatever service deemed necessary and if successful to come back to Court to vary the order, or indeed to vary the order by consent, if the parent with care is satisfied with the outcome of the work provided. If there is a time limit for the contact centre which does not coincide with the Court's management of the specific features of the case, this could led to the possible outcome that there is no contact between the child and parent if "time" at the centre expires. There needs to be flexibility.

91 CHICHESTER STREET
BELFAST, BT1 3JQ
NORTHERN IRELAND

Email
judithmcgimpsey@barofni.org

victoria.taylor@barofni.org

Direct Line
+44(0) 28 9056 2132

Website:
www.barofni.com

72. In a minority of circumstances the only place for safe contact between the parent and child is the contact centre in the long term particularly if other family members or friends are deemed unsuitable or will not assist. If contact at the contact centre cannot be maintained and the Trust cannot provide an alternative provision for safe contact, the child may suffer the loss of a relationship with the other parent.

Streamlining the System: Individual appointments, perhaps in clusters, for first directions hearings to be introduced for at least trial periods across the family justice system. [FJ19]

73. The present system for court listing can pose considerable difficulties for all court users and the Bar welcomes the opportunity to consider alternatives. The Bar believes that the recommendation of appointments in clusters could represent a viable option. This time is normally well utilised by Counsel who engage in ongoing discussions with their clients and opposing client in an attempt to seek agreement on case management issues and/or to narrow down more substantive issues. We would welcome further exploration of the potential use of individual appointments in the family justice system. A time allotted system was attempted previously but was halted. Historically some court allotted times did not work as there was no time for pre-hearing negotiations and many cases became hearings unnecessarily. It would be worthwhile to investigate the reasons for this prior to further research being conducted.

74. Liaison with the Family Bar, Family Solicitors, NIGALA and DLS is crucial regarding the development and implementation of any trials.

75. Further considerations include factoring in consultation/negotiation time as well as court time and the availability of public transport, especially in rural areas. Notice to the Court that legal aid has been granted will again assist with the listing and timing of an application. This is another example of the potential impact of increasing numbers of litigants in person. More court time is taken up explaining the system and will need to be considered carefully.

A Practice Direction emanating from the Senior Family Judge directing the implementation of the Children Order Advisory Committee (COAC) guidelines, subject to the right of a judge to preclude or vary their use in an individual case. [FJ20]

76. The Bar has no difficulty with this recommendation. However, it must be recognised that the guidelines should be flexible with the judge able to vary their use depending on the nature of an individual case. The Family Bar Association

91 CHICHESTER STREET
BELFAST, BT1 3JQ
NORTHERN IRELAND

Email
judithmcgimpsey@barofni.org

victoria.taylor@barofni.org

Direct Line
+44(0) 28 9056 2132

Website:
www.barofni.com

would welcome the opportunity to contribute to any consultation on the drafting of a Practice Direction.

The attention of the profession to be expressly drawn to the preferred use of the C2 system in pending applications. [FJ21]

77. Family practitioners are not aware of any issues in this regard as many C2 forms are directed by Counsel during the course of proceedings. To prevent delay with LSA, some practitioners have written into the Court, with the other parties consent or notice is given to the other parties if there is little time, to ensure that an issue can be dealt with in time for the review hearing. If an urgent C2 is not given prompt listing, then this can add to delays which may impact on the child. Consideration may be required as to how the Courts should deal with urgent and non-urgent C2 applications especially if there is a delay with LSA. The Family Bar Association is best placed to issue appropriate communication to counsel in relation to this and will ensure that there is continued communication between Counsel prior to a review hearing.

C1 and C1AA forms to be processed through an interactive online template in order to enhance stricter compliance with the COAC guidelines. [FJ22]

78. An online template of proceedings which is user friendly and in plain English will prove useful. We would reiterate our concerns regarding online or electronic service of applications.

Judicial Consistency: Training sessions, where family judges are expected to attend as a group, to be introduced by a way of a formal and regular system. [FJ23]

79. This recommendation is not applicable to the Bar.

In both private and family law, a tutor judge to be nominated to be responsible for ensuring that family judiciary are kept up-to-date with current literature dealing with developments in family law. [FJ24]

80. This recommendation is not applicable to the Bar. We do not believe that the introduction of the single tier system is required to address this issue.

Enforcement: The implementation of "stop contact" notices which require to be served before contact is stopped. This should be included in any penal notice. [FJ25]

91 CHICHESTER STREET
BELFAST, BT1 3JQ
NORTHERN IRELAND

Email
judithmcgimpsey@barofni.org

victoria.taylor@barofni.org

Direct Line
+44(0) 28 9056 2132

Website:
www.barofni.com

81. If this means providing notice that contact is about to be stopped unless certain conditions apply, this is to be welcomed. If this means that this is a notice that contact is to be stopped, whether in public or private law, then the reasons for stopping the contact should be contained in the notice. It is not clear why there is a suggestion that a penal notice is attached to this order. Common practice is for a penal notice to be applied for and attached to an order directing contact. Given the serious implications of a penal notice, this needs to be clarified further.

The invocation of penal notices in all relevant court orders subject to the discretion of the judge to postpone such a notice. [FJ26]

82. The FBA reiterates the view that there are serious implications if a penal notice is attached to orders. If they become common place and attached to all orders, the impact as a deterrent in family proceedings may diminish and lead to an increase of enforcement proceedings. It would be impossible to ignore the Article 6 rights to a fair hearing and the unintended consequence of increased legal costs. The current system of applying for a penal notice to be attached to interim orders ensures that the respondent is made aware of the seriousness of the matter and they are warned of the consequences of a breach of the order. If there are child welfare issues regarding a child's view or behaviour regarding contact, the merits or otherwise of this argument needs to be investigated by the Court first, before punitive measures are instigated for non-compliance with court orders. Automatic penal notices to all relevant court orders, will require personal service for the purposes of enforcement proceedings. This could create an extra cost. Finally the implications of this proposal for litigants in person who do not understand the court process cannot be underestimated.

The creation by the relevant department, probably the DoJ, of relevant classes to which offenders compulsorily must attend in the event of breaches of orders. Failure to attend would constitute contempt of court punishable by imprisonment. [FJ27] The introduction of community service orders for offenders who breach family court orders. [FJ28] An emphasis on swift, priority driven references back to court when breaches are observed. [FJ29] The inclusion of these recommendations in appropriate legislation at the earliest possible opportunity. [FJ30]

83. The Bar takes the view that not enough information is provided in terms of how these recommendations [FJ27 and FJ28] would practically work to give a detailed response. We would query the cost implications for the court system and whether

91 CHICHESTER STREET
BELFAST, BT1 3JQ
NORTHERN IRELAND

Email
judithmcgimpsey@barofni.org

victoria.taylor@barofni.org

Direct Line
+44(0) 28 9056 2132

Website:
www.barofni.com

these measures have been implemented in any other jurisdictions. The provision of any research or evidence base to demonstrate the potential value of these recommendations would be very welcome in order to justify the initial investment and effort they would require. In addition, we would be concerned at the potential for these measures to generate satellite litigation beyond any initial family court order with parents trying to challenge community service orders or attendance at compulsory classes. Tailored sanctions into breaches of family court orders are to be welcomed but further research is required.

84. In respect of [FJ29], this is generally the practice and use is made of the C2 application to bring the matter back to court. Obtaining legal aid sometimes creates delay.

85. In respect of [FJ30], the current legislative provision could be used more efficiently and effectively to achieve the aims set out in this report. Any reform needs to be evidence led to ensure optimum results.

Chapter 7: Resolutions Outside Court

Mediation or some similar system to be more widely available within the family justice system. [FJ31]

86. The Bar believes that mediation has an important role to play within the family justice system as it represents an important diversionary measure when made available to parties at the right stage during proceedings. Counsel are adept at introducing the idea of mediation to the parties involved in a case at the point when it is most likely to be effective. It is worth noting the approaches frequently employed by practitioners in family cases as they are not just lawyers or advocates focused on arguing points of law in a courtroom. Counsel represent a force for resolution, negotiation, mediation and objective realism in cases often involving entrenched emotional dynamics with many cases settling without the need for a final court case.

87. However, we note that the report appears to focus specifically on the services provided by Mediation NI, quoting at paragraph 7.9 that it is "*the only independent, specialist family mediator provider and family mediation training provider in Northern Ireland*". We would highlight that there are other mediation providers available which are not mentioned in the report. For example, the Bar of Northern Ireland has a Barrister Mediation Service provides a pool of independent practitioners who are trained, accredited and regulated in the provision of mediation services. A significant number of family law barristers have already completed specialist training in family mediation. Those trained by QUEST

91 CHICHESTER STREET
BELFAST, BT1 3JQ
NORTHERN IRELAND

Email
judithmcgimpsey@barofni.org

victoria.taylor@barofni.org

Direct Line
+44(0) 28 9056 2132

Website:
www.barofni.com

have additional training in child protection/safeguarding and the inclusion of children in the mediation process.

Mediation to be more easily accessible and funded by legal aid as part of the court process. Consideration should be given to introducing legislation similar to s.10 of The Children and Families Act 2014, mandating the undertaking of mediation before issuing any private law children or financial remedy cases. [FJ32]

88. The Bar is content with suggestion that mediation should be more widely available and funded by legal aid as part of the court process. We remain to be convinced that it may not create extra funding demands of public funding and an extra layer in the process which can cause delay as mediation is not always successful. However, we disagree strongly with any insistence of mandatory mediation. As outlined in response to recommendation 31, the mediation process will only be meaningful when initiated in the right circumstances and at the appropriate point in the court process which will inevitably differ from case to case with counsel often best placed to advise on this. We remain wary that mediation may not decrease costs in court proceedings if they do not achieve a settlement. We do note that many mediators welcome legal representatives during the mediation process.

89. The report acknowledges at paragraph 7.38 that "*compulsory mediation is not likely to succeed*". However, the idea at paragraph 7.39 of placing an onus on professional advisors to explain mediation in all cases before the issuing of proceedings would also prove very problematic in practice. The experience of counsel often shows the issue of proceedings and the first appearance before a court can in fact motivate clients to consider the potential of mediation. Unfortunately the concept of mediation as a gateway recommended in this report is likely to reduce it to a tick box exercise for the parties involved in a case. This will also be entirely self-defeating for the court system resulting in the increased likelihood of added delays and costs with parties unable to see the potential value of mediation at a later point in the court process after ruling it out before the issue of proceedings. The Family Bar is aware that timing for mediation may prove invaluable as some mediations which take place during proceedings can lead to a successful outcome. The parties may not have been ready for mediation at the beginning of the process. The added expense to the DOJ of providing mediation information and assessment meetings, similar to the system England and Wales, could be considerable.

90. Consequently, the Bar is entirely opposed to the introduction of similar legislation to Section 10 of The Children and Families Act 2014 in England and Wales. Instead we believe that mediation should be widely accessible at any point in the court

91 CHICHESTER STREET
BELFAST, BT1 3JQ
NORTHERN IRELAND

Email
judithmcgimpsey@barofni.org

victoria.taylor@barofni.org

Direct Line
+44(0) 28 9056 2132

Website:
www.barofni.com

process and funded through legal aid. The long term success of mediation agreements ultimately depend on the willingness of the parties to compromise, the intensity of the dispute, the parties motivation to settle and the conduct of the mediator. This must be entered into voluntarily and at the appropriate point in time in order to increase the likelihood of agreement being reached. The review of Access to Justice 2 also addresses this area in Chapter 17 and proposes making mediation services more easily accessible but does not appear to endorse making any part of this process mandatory.

Mediators to have some experience in child protection and adult safeguarding. [FJ33]

91. The Bar accepts this recommendation given our concerns that mediation is a largely unregulated profession at present. This contrasts with the Bar's Barrister Mediation Service under which all members are fully trained and accredited as well as regulated by the Bar Council of Northern Ireland and subject to the Code of Conduct for Mediators. Those who are independently trained by QUEST and provide independent family mediation are trained in child protection and safeguarding.

However, our preferred recommendation is for an earlier educative programme similar to that of the Parenting Through Separation, or Separated Parents Information programme in New Zealand and England respectively, where families are required to attend, save in exceptional circumstances, prior to issuing proceedings. Thus, mediation is seen as but one possible avenue to be explored which may in the event be advised by the programme. [FJ34]

92. The Bar has no issue with the provision of educative programmes similar to Parenting through Separation in New Zealand and the Separated Parents Information Programme in England. However, we do not believe that this should be made mandatory given that this could operate to create a barrier and restrict access to the court when required in certain cases.

93. Furthermore, the Bar notes that the report lacks concrete figures or research on the value of mandatory programmes in other jurisdictions. There is reference to the experience of Family Dispute Resolution in New Zealand which is often recommended by Parenting Through Separation with Judge Ryan, President of the Family Court, indicating in a "conversation" at paragraph 7.42 that "a substantial number of parents" refuse to engage or fail to keep appointments but for those parents who do engage, 70-75% resolve their problems without court access. However, a full formal evaluation of the project will not be completed for another two years. The Bar believes that additional robust statistics and analysis

91 CHICHESTER STREET
BELFAST, BT1 3JQ
NORTHERN IRELAND

Email
judithmcgimpsey@barofni.org

victoria.taylor@barofni.org

Direct Line
+44(0) 28 9056 2132

Website:
www.barofni.com

from other jurisdictions are required in relation to the effectiveness of mandatory programmes prior to the issue of proceedings.

Close liaison between the DoJ in Northern Ireland and the New Zealand family justice system would be the first step, for instance, on the legislative change that would be required to introduce a formalised programme along the lines now operating in New Zealand and elsewhere. [FJ35]

94. This recommendation is not applicable to the Bar. However we believe that the first step should be to receive a robust evaluation and costings of an introduction of a system. We note that whilst New Zealand has an adversarial system it has adopted an inquisitorial system for children's proceedings and not quasi–inquisitorial as in Northern Ireland. Whilst the quasi-inquisitorial system ensures that solutions are brought to the court rather than just the problems (as emphasised by a previous family judge, now Lord Justice Weir), the fact that there remains a place for the robust testing of evidence by way of oral evidence and cross examination in the Children's Court should be preserved.

95. It is noted that the New Zealand judiciary may be more inclined to favour an inquisitorial approach without the hearing of evidence. However, there is the possibility of confirmation bias creeping into the judiciary's work as there will no longer be the checks and balance system of an adversarial approach in certain circumstances. In England and Wales and Northern Ireland there is jurisprudence relating to oral hearings and cross examination of evidence in the Children's Court which we believe provides evidence of the effectiveness of the workings of the quasi inquisitorial system. We seek the evidence led research to suggest that this system is not working.

96. We are aware of concerns in New Zealand about the perceived decline in the role of natural justice in family proceedings and the right to a fair hearing which includes the right to be heard and to challenge evidence if necessary. Therefore we believe that there should be more reasoning provided as to why New Zealand is the family justice system recommended in the report as opposed to other adversarial systems with similar resource issues regarding the provision of health and legal services. We query the close liaison with New Zealand as there are other systems which we could benefit from understanding.

Certain cases should be exempt from immediate referral to a parenting programme and these would include:

- Where a party or their children have been subject to domestic violence.
- Where there are allegations of sexual abuse.
- Where there are allegations of drug or alcohol misuse.
- If a party is unable to take part (for example, if they live outside the jurisdiction, are in custody or refused to take part).

91 CHICHESTER STREET
BELFAST, BT1 3JQ
NORTHERN IRELAND

Email
judithmcgimpsey@barofni.org

victoria.taylor@barofni.org

Direct Line
+44(0) 28 9056 2132

Website:
www.barofni.com

- If there is an existing order which has been breached. [FJ36]

97. As outlined in response to the previous recommendation, the Bar takes the view that no cases should automatically be referred to a mandatory parenting programme. We believe that the definition of domestic violence should be shared. One feature lacking would be urgent cases whereby removal out of the jurisdiction of Northern Ireland is at issue. This list of criteria for exemption is also applicable to cases where mediation is considered to be unsuitable (even shuttle mediation).

Chapter 8: Divorce Proceedings in Northern Ireland

The responsible government department to take steps to make the operation of the divorce process in Northern Ireland more administrative and less court-based, thereby reducing cost, time and, most importantly, emotional stress and strain. [FJ37]

98. It is not for the Bar of Northern Ireland to seek to determine the legal framework for the operation of divorce proceedings. The NI Executive must determine this in accordance with the values of society and it is their responsibility to legislate in accordance with any changes.

Administrative and online adjudication of divorces in non-fault and undefended applications to be introduced. There is no reason why such adjudication cannot be processed online. [FJ38]

99. The Bar has no particular issue with further consideration being given to simplifying the divorce process through the potential for administrative and online adjudication in non-fault and undefended applications subject to certain issues outlined below.

Administrative adjudication to be available for all divorce applications that are grounded upon 2 years' separation with consent and 5 years' without consent, subject to the hardship test. [FJ39]

100. The Bar has no particular issue with further consideration being given to simplifying the divorce process through the potential for administrative adjudication in cases involving 2 years' separation with consent and 5 years without consent subject to the hardship test, emergency financial remedies (e.g. mareva injunctions) and issues regarding the children's welfare.

91 CHICHESTER STREET
BELFAST, BT1 3JQ
NORTHERN IRELAND

Email
judithmcgimpsey@barofni.org

victoria.taylor@barofni.org

Direct Line
+44(0) 28 9056 2132

Website:
www.barofni.com

Administrative/online adjudication only to be used in divorce applications grounded on one of the fault grounds – adultery, desertion, unreasonable behaviour – when the respondent/co-respondent has admitted the ground and does not wish to defend the application. [FJ40]

101. The Bar has no particular issue with further consideration being given to simplifying the divorce process through the potential for online and administrative adjudication in cases involving one of the fault grounds when the respondent does not wish to defend the application and provided service needs are clarified.

Administrative/online adjudication to include divorce applications in which there were minor children of the family. However, a Statement of Arrangements would still be required and should be approved by the judge. [FJ41]

102. The Bar is concerned that the inclusion of divorce applications involving minor children in administrative and online adjudication could present some complications. For example, if there were ongoing proceedings in relation to children of the family then any arrangements would need to be settled before proper adjudication of the divorce could take place. The discretion to direct an oral hearing must always be available when this is in the best interests of the children. The issue therefore presented by this recommendation is ensuring the attention of the Judge especially if there is a children's issue pertaining to the respondent.

Northern Ireland Courts & Tribunals Service (NICTS) to establish an online information hub, including a telephone helpline, providing information and support for couples following divorce or separation outside court. The information hub/advice line and centre would be located in specified court buildings staffed by NICTS to assist service users. [FJ42]

103. The Bar believes that members of the public should have access to relevant and easily understandable information in relation to divorce proceedings. The current NICTS website is not fit for purpose and we believe that time and money should be invested in order to make it more accessible for family court users.

104. The Bar notes the suggestion at paragraph 8.16 for an information centre potentially located in Laganside Court in Belfast. We believe that court service staff have a vital role to play in helping court users to navigate the system, regardless of whether they have legal representation or not. However, we do not accept the comment at paragraph 8.19 that litigants in person could be charged a fixed fee for assistance from court staff to check completed forms in anticipation

91 CHICHESTER STREET
BELFAST, BT1 3JQ
NORTHERN IRELAND

Email
judithmcgimpsey@barofni.org

victoria.taylor@barofni.org

Direct Line
+44(0) 28 9056 2132

Website:
www.barofni.com

of readiness of issue. We would query whether litigants in person would be able to afford such a fee if they cannot afford legal representation. There is also a risk that the level of support required would be beyond the remit of court service staff, for example if an individual was unable to fill in the forms or they were filled out incorrectly. Litigants in person might expect that staff would be able to provide legal advice which would be entirely inappropriate.

105. In addition, the costs and staffing requirements associated with the establishment of this information centre for litigants in person following divorce or separation would be considerable. This funding would be put to better use in helping such individuals' access proper legal advice and representation.

NICTS to invest in technology to enable the online issue of all such divorce proceedings. [FJ43]

106. This recommendation is not relevant to the Bar and is a matter for the NICTS. However we would again raise the matter of cost, access to the internet, compatibility and security of IT systems especially if dealing with litigants in person. We are conscious that there are problems with the CJSM system at present.

Amendment of the Family Proceedings Rules (Northern Ireland) 1996 to allow for online issue of all divorce proceedings, electronic service and acknowledgement of service. [FJ44]

107. This is a matter for the Department of Justice in drafting the relevant legislative amendments for scrutiny by the Assembly in order to allow for the online issue of all divorce proceedings. It remains unclear how a petitioner can prove acknowledgement of service of a petition via online/electronic service. If possible, conventional service of post and personal service should be retained alongside the introduction of an electronic service if that has the approval and funding from NICTS.

Online service to be supplemented by the option of service by post in circumstances where online service was not feasible or possible. [FJ45]

108. The Bar accepts this recommendation and believes that this option must be retained.

The adjudicator to be a member of the judiciary (that is, a Master of the High Court or a family judge). [FJ46]

91 CHICHESTER STREET
BELFAST, BT1 3JQ
NORTHERN IRELAND

Email
judithmcgimpsey@barofni.org

victoria.taylor@barofni.org

Direct Line
+44(0) 28 9056 2132

Website:
www.barofni.com

109. The Bar accepts this recommendation. The FBA believes the following important riders are required. Firstly, in the case of children, the adjudicator would always have a discretion to insist on an oral hearing where the Statement of Arrangements for Children (which would still be a necessity in all divorces where children under the age of 18 are present) caused them to consider an oral hearing to be in the children's best interests. Secondly, contested divorces should still be accorded an oral hearing before a judge. Thirdly, in the case of fault petitions, where one party wished to have an oral hearing, the adjudicator should retain the discretion to grant such an application in circumstances where they consider that it would be in the interests of justice to do so. Where for other good reason, in the interests of justice and at the discretion of the adjudicator, there should be an oral hearing, the adjudicator shall so order. The commencement of Article 15 of the Family Law Act 1993 – as appropriate.

Chapter 9: Ancillary Relief

A Practice Direction making available a mechanism for parties to attend with legal representatives, or alone if unrepresented, before the Master before proceedings have been issued. [FJ47]

110. It is not clear what the purpose of a pre-issue of court proceedings attendance in front of the Master is supposed to achieve or address. It could increase legal costs and present a scenario whereby there are three hearings before a Master, (the pre issue of proceedings hearing, the FDR and then the hearing). We are uncertain as to how this proposal translate to County Court ancillary relief proceedings. There is no indication of payment for such attendances. We understand that this was a proposal in Norgrove which was not implemented and the reasons for not doing so should be investigated.

Online filing of questionnaires, statements of core issues, adjournment applications, and skeleton arguments and, provided proper assurance about security is obtained, discoverable documentation. [FJ48]

111. This proposal presents no issues, provided all IT systems are compatible for all users, including personal litigants. Furthermore, there must be rigorous security measures given the nature of personal financial information that is disclosed during ancillary relief proceedings.

All applications for ancillary relief to be made on-line. [FJ49]

91 CHICHESTER STREET
BELFAST, BT1 3JQ
NORTHERN IRELAND

Email
judithmcgimpsey@barofni.org

victoria.taylor@barofni.org

Direct Line
+44(0) 28 9056 2132

Website:
www.barofni.com

112. The Bar has no issue with this recommendation, subject to all court users including personal litigants having access to secure internet services and the issue of service of proceedings on respondents is researched further.

Payment for lodgement of papers using solicitors' ICOS account system. [FJ50]

113. This recommendation is not applicable to the Bar. However we would raise the matter of how a personal litigant without an ICOS account would be able to pay for lodgement.

Orders/Amended orders issued online. [FJ51]

114. The Bar has no issue with this recommendation. However we would raise the matter of only solicitors, not counsel have access to ICOS.

Service of documents to be permitted by email as an option. The option of service by post should remain. [FJ52]

115. This is agreeable, subject to an effective secure measure for acknowledgement of service of proceedings.

Option of serving affidavit evidence online. [FJ53]

116. This is agreeable, subject to security measures, all parties having access to the internet and a process for acknowledgement of service.

Amendment of the Family Proceedings Rules (Northern Ireland) 1996 (FPR) to allow for such online steps. [FJ54]

117. This is a matter for the Department of Justice in drafting the relevant legislative amendments for scrutiny by the Assembly in order to allow for such online steps.

A system whereby the parties should be encouraged to address interim hardship issues for maintenance pending suit alongside the ancillary relief application. [FJ55]

91 CHICHESTER STREET
BELFAST, BT1 3JQ
NORTHERN IRELAND

Email
judithmcgimpsey@barofni.org

victoria.taylor@barofni.org

Direct Line
+44(0) 28 9056 2132

Website:
www.barofni.com

118. This practice is currently operated by the High Court Masters as applications for ancillary relief are being issued in some occasions alongside the divorce petition and applications for maintenance pending suit are utilised when there are interim hardship issues. It is unclear if the District Judges have adopted this practice but this could happen at the County Court level as well.

Maintenance pending suit applications to be adjudicated following written submissions. Oral evidence only to be heard at that stage if deemed necessary by the district judge or Master. [FJ56]

119. Oral evidence may be necessary if there is an issue regarding the veracity of declared income, which may not arise if person is employed but may become more difficult if dealing with the self employed. Oral hearings may be required if there is an issue regarding credibility. The Court must be cognisant of Article 6 right to a fair hearing.

Legislation to be introduced to empower the court to provide for a sale of property in isolation at any stage of the proceedings without hearing the whole case. [FJ57]

120. Further research is required in relation to the efficacy of this proposal for Northern Ireland especially if the property is the former matrimonial home and there are children under the age of 18. The Master/District Judge who decides whether to implement this power before other assets are valued with a view to potential off setting should be the same Judge/Master who will determine all matters for the sake of judicial continuity. The same Judge should clearly state their reasons for making such an order and there is a prompt appeal mechanism.

Affidavits in ancillary relief to follow the format set out in paragraph 9.39 above. [FJ58]

121. The FBA recommend and currently follow this practice.

Directions and timetabling, especially in relation to discovery to be enforced by a greater use of cost penalties. [FJ59]

122. The Master/Judge must have the ultimate control of when and how to impose cost penalties regarding issues relating to discovery on a case by case basis.

91 CHICHESTER STREET
BELFAST, BT1 3JQ
NORTHERN IRELAND

Email
judithmcgimpsey@barofni.org

victoria.taylor@barofni.org

Direct Line
+44(0) 28 9056 2132

Website:
www.barofni.com

The implementation of reserve lists for family dispute resolution. [FJ60]

123. At present, where a case is listed for family dispute resolution but is not in a position to proceed on the listed date, the existing system allows for conversion of the case from FDR to a Review in the Presence of the Parties. This permits negotiations to continue and permits access to the Court on the listing date by virtue of remaining in the list. Rarely are the matrimonial courts left doing nothing in the event that adequate notice is given to the Court. The Bar is unclear of the rationale behind this recommendation.

Penal notices to be attached to court orders (save where the judge or Master deems it unnecessary or inappropriate) with the specified provision of clearer consequences, including costs, interest, immediate property sale, transfer of assets, access to/injunction of bank accounts to secure implementation and immediate referral to the judge to address the issue of contempt. This provision could also serve to invoke FPR rule 2.64 (5) ordering discovery and information from third parties and, therefore, a warning to such third parties may also be included. [FJ61]

124. We refer to our response on the automatic inclusion of a penal notice on Orders made by the Children's Court and believe that the same applies to ancillary relief proceedings with particular regard to the process of enforcement for breach of a penal notice and the necessity for personal service. However, we would question whether it is fair to include a penal notice with all the consequences on unrepresented third parties in ancillary relief proceedings.

A protocol requiring the offending parties to notify the other as soon as they are aware that they will be unable to perfect the court order. [FJ62]

125. This is agreeable.

The oral hearing of ancillary relief applications to continue pending further consideration of the Rechtwijzer system. [FJ63]

126. The Bar has previously commented on the Rechtwijzer project. We believe that this recommendation fails to understand that the Rechtwijzer system does not prohibit hearings at court in cases which are not resolved via its online mediator. We believe that a range of questions still need to be answered in relation to how this project, which remains in infancy, could operate appropriately for ancillary

91 CHICHESTER STREET
BELFAST, BT1 3JQ
NORTHERN IRELAND

Email
judithmcgimpsey@barofni.org

victoria.taylor@barofni.org

Direct Line
+44(0) 28 9056 2132

Website:
www.barofni.com

relief applications. Consequently, we welcome the recognition in the report that the oral hearing of these applications must continue.

The power of referral of valuation matters to the Lands Tribunal. [FJ64]

127. Currently, a valuation hearing can take place in front of the Master if there is no agreement between valuers prior to the hearing. Absent evidence that the matrimonial masters and district judges are not ruling on valuations in a fair manner or that this referral will lead to better outcomes, we would query the need for this recommendation. It seems to be a further layer of litigation which would require additional provision for governance and payment.

In the arena of ancillary relief, early neutral evaluation to be encouraged by the professions. It would lead to a different Master hearing the case if the matter were not to resolve. Minutiae such as what documentation or raw material would be available for such early evaluation (for example, a statement of core issues) would also have to be contemplated. [FJ65]

128. The Bar believes that there is an important need for parties to be empowered to make informed and proportionate decisions around the most appropriate manner in which to deal with ancillary relief disputes. It is worth noting that members of the Bar are already routinely engaged informally at a preliminary stage by solicitors to provide expert advice on cases in the area of ancillary relief. Counsel continue to encourage early settlement of cases if this is appropriate in a particular case by engaging in joint negotiations before proceedings are issued. This recommendation of early neutral evaluation appears to duplicate the FDR process in the High Court. The FDR process is an early evaluation of the assets in the case and core issues are lodged with the Court prior to the FDR hearing.

129. We agree that the FDR process needs to be extended to the District Judges Court, however this may prove problematic given that there is only one District Judge per court division. However, if one or both parties choose not to accept the early neutral evaluation then the process must not act as a barrier to progressing the full hearing of a case. Counsel constantly advise on cost implications if cases are not resolved sooner rather than later and if cases go from the FDR to a hearing but there are always certain cases when a hearing is required. On occasion, if there is a dispute on numerous issues it may be more cost effective to go straight to a hearing rather than wasting time engaging in the FDR process.

91 CHICHESTER STREET
BELFAST, BT1 3JQ
NORTHERN IRELAND

Email
judithmcgimpsey@barofni.org

victoria.taylor@barofni.org

Direct Line
+44(0) 28 9056 2132

Website:
www.barofni.com

130. We believe the concept of an early neutral evaluation requires more in depth consultation. We would also highlight our opposition to the suggestion in the Access to Justice Review 2 at Chapter 20 of the establishment of panels of lawyers to provide an Early Neutral Evaluation service, given that this would only result in duplication and the creation of a formal process where there is no need for one.

Chapter 10: The Public Law System

Case management: A new model for providing information to the court at initial application stage to be developed. [FJ66]

131. The Bar requires further information on this suggested new model before being able to comment in greater detail. We are aware that some Trusts can and do provide assessments prior to proceedings being issued. There is a real or perceived risk that in house trust assessments lack independence and are seen as being utilised for evidential purposes. We query whether front loading of assessments in fact speeds up the process for the child who is the subject of Court proceedings. Subject to Trust resources, specific assessments cannot take place until proceedings are issued. We query whether waiting for all assessments deemed necessary before issuing proceedings changes the speed of the process for the child. Court statistics may reduce regarding the time a case is in Court but that does not necessarily mean that the time a child has to wait for an outcome is reduced. Some parents only engage in the process when they have received legal advice and guidance. It is always important to remember that the legal advisor can speak more freely to the client than the social worker and indeed this is recognised by many social workers. Regarding medical reports, the current Family Judge has adopted the approach in England and Wales to ensure that doctors provide reports after receiving a letter of instruction and their report is provided in a similar format to that of court directed experts.

Judges to be given specific time to read essential documentation and prepare for each hearing. Case listing should make provision for this. [FJ67]

132. Considerable efforts have already been made by the courts and judiciary to ensure that the use of case management is maximised. Counsel recognise that judges at most court levels spend time during each day engaged in preparing for cases which are on the next day by reading papers, issuing directions by email and making telephone calls. The Bar considers that the judiciary will be best placed to consider this recommendation in greater detail but note that only in emergencies reports should be filed earlier than the day before a court review Given the pressures on family judges to not only read documents, deal with personal litigants

91 CHICHESTER STREET
BELFAST, BT1 3JQ
NORTHERN IRELAND

Email
judithmcgimpsey@barofni.org

victoria.taylor@barofni.org

Direct Line
+44(0) 28 9056 2132

Website:
www.barofni.com

and adjudicate/manage the case, one wonders if there is not a necessity for more family judges in both the FPC and FCC.

Court lists to reflect the need for in-depth case management, particularly at first directions stage. [FJ68]

133. We welcome the suggestion of in-depth case management as a useful tool in ensuring improved throughput and timing in court lists. The Bar would require more information on any new court listing policy before being able to comment in any further detail. However many Children Barristers have highlighted that the time spent prior to the hearing of the court review is well spent due to ongoing discussions with clients and other Counsel in an attempt to agree case management decisions for the Court's consideration, resolve peripheral issues and disputes and to narrow down other substantive issues if possible. There could be the potential for the Department to consider running a pilot programme to explore the concept of morning and afternoon time slots in an effort to allow for enhanced case management. A consultation with the trusts and NIGALA as well as the legal profession would prove useful. However, practitioners recall previous attempts and it may be useful to determine the reasons why such a system failed in the past.

134. We would stress the current problem of court time outside the Belfast area. We note that if there are personal litigants in public law cases, this will delay any in depth case management as the Court is required to discuss procedure. Finally, a particular problem in public law in the Family Proceedings Court is the fact that Counsel are barely instructed due to constraints placed on instructing solicitors by LSA. We believe that Counsel are a crucial component in this proposal, to ensure that there is in depth case management by the Judge on issues the Judge notes and other issues drawn to the Court's attention at an early stage by Counsel.

Judges to determine only the key issues which will affect the ultimate outcome of the case. Peripheral disagreements should be resolved between the parties without the intervention of the court wherever possible. [FJ69]

135. We would refer to our earlier comments. The Bar takes the view that this position already exists with counsel taking every necessary step to ensure that marginal disputes are resolved between the parties without the intervention of the court wherever possible. At present a C2 application is only made to the court when it has not been possible to arrive at a resolved position between the parties.

91 CHICHESTER STREET
BELFAST, BT1 3JQ
NORTHERN IRELAND

Email
judithmcgimpsey@barofni.org

victoria.taylor@barofni.org

Direct Line
+44(0) 28 9056 2132

Website:
www.barofni.com

Social workers and guardians routinely to take part in directions and review hearings by video link, telephone or Skype. [FJ70]

136. We refer to our response to F18. The Bar considers that the installation of these various technologies in courtrooms and other locations would require considerable investment and cross departmental cooperation between DOJ and the Department of Health. However, this is a matter for the social services and the Guardian Ad Litem Northern Ireland to comment in greater detail on. We note that Master Wells makes use of telephone conferencing in fairly uncontentious issues when dealing with social workers who may have to travel, although practitioners have noted that sometimes this does not work and the telephone is not answered because the social worker in question may be called away from their desk to deal with a matter.

137. It is the Family Bar's experience that despite the best efforts on behalf of court staff, the quality of the video link is poor depending on the recipient's video link facilities and often subject to break down. The Family Bar urge social workers and GAL's to make use of consultations with Counsel prior to hearings which enables Counsel to discuss the case with each other prior to the review in an attempt to narrow down issues or indeed present the Court with an agreed position for its consideration.

Technology and virtual reality courts to be extended to appearances by legal representatives. [FJ71]

138. The Bar accepts that there is a greater role for new technology and digital working being further integrated into the court process. However, we would request further information on exactly how virtual reality courts might operate in practice. The financial investment required in the court infrastructure alone would be considerable. In addition, there is a risk that this could increase the potential for miscommunication in certain family disputes given that the lack of face-to-face interaction could jeopardise opportunities for counsel to fully examine the credibility of parties and assist with engaging in problem solving face to face with the person they represent.

139. The Bar believes that the potential for full court hearings with legal representatives in attendance must always be retained and employed when appropriate. In terms of evidence giving, there is much to be said about having a witness in the courtroom, giving them a sense of the gravity of the process and it allows for the Judge to get a better sense of the witness. Taking last minute instructions before or during a final hearing can only be facilitated if Counsel is

91 CHICHESTER STREET
BELFAST, BT1 3JQ
NORTHERN IRELAND

Email
judithmcgimpsey@barofni.org

victoria.taylor@barofni.org

Direct Line
+44(0) 28 9056 2132

Website:
www.barofni.com

present as well as the client. Expediency should not result in a lowering of the quality of justice. The use of technology should be consistent with open justice.

140. Furthermore, we would also point out that virtual reality courts could lead to conflicts arising with the Bar of Northern Ireland's Code of Conduct in relation to the appropriateness of direct discussions between counsel and other professionals involved in a case without the presence of an instructing solicitor.

> Court Orders: After each hearing in the High Court and Family Care Centres (or of the new one tier family court, if set up), the trust representative to e-mail an agreed court order to the judge for approval, and onwards transmission to the clerk. [FJ72]

141. The position remains that in respect of routine, straightforward orders, the clerks are responsible for the drafting of such orders. We query why training has not been provided to all court clerks. The High Court clerks are very efficient in providing orders and liaising with Counsel regarding drafts of same but we understand that currently this standard varies in other courts and there may not be the same access to court staff in the lower courts.

142. The Bar is content to accept this recommendation for more complex orders save Orders where a child's liberty is at stake if express approval is obtained from Trust Counsel that an agreed position has been achieved and the Court approves directions given.

> Any order made by a family court to remain in force until the conclusion of the proceedings, or until further order. [FJ73]

143. The Bar has no issue with this recommendation. We would argue that there always should be "liberty to apply" if an emergency or anything unforeseen arises. Reasons for applying to bring the case back before the Court directed reviewed hearing should be contained in the C2.

> Appeals: All appeals to be determined within 21 days of the initial decision, save in exceptional circumstances. Such circumstances do not include legal aid difficulties, unavailability of counsel, or unavailability of judicial resources. [FJ74]

144. The Bar welcomes the recommendation for all appeals to be determined within 21 days of the initial decision. However, we would have reservations around the ability of the court to manage this at present and we believe more could be down to fast track applications for legal aid rather than stating that it is not an

91 CHICHESTER STREET
BELFAST, BT1 3JQ
NORTHERN IRELAND

Email
judithmcgimpsey@barofni.org

victoria.taylor@barofni.org

Direct Line
+44(0) 28 9056 2132

Website:
www.barofni.com

exceptional circumstance. We do not agree with the precluded circumstances as presently drafted. Appellants with an arguable case are entitled to a fair hearing.

Non-Accidental injury: Cases involving alleged non-accidental injury to be fast-tracked at all stages. [FJ75]

145. The Bar welcomes the proposal for cases involving non-accidental injury to be fast-tracked at all stages. We agree that robust case management and the provision of medical notes and records at an early stage in paragraph 10.60 are vital. However, it should be noted that these cases can potentially involve the removal of a child from a parent's care. These serious and often complex cases require scrutiny by experienced counsel and the provision of expert evidence which can be time consuming in order to ensure that miscarriages of justice do not occur. An unintended consequence of changes to funding for medical experts may be a reduction in the available pool of experts. This can cause delay.

146. Furthermore, we note mention of a statutory time limit for care proceedings at paragraph 10.82 with the Care Proceedings Pilot currently considering this further and the report making no recommendation at this time. The Bar is in favour of measures to reduce avoidable delays for children within the family courts but we do not believe that the imposition of an arbitrary limit of 26 weeks, which has been adopted in England under The Children and Families Act 2014, is suitable in the context of Northern Ireland. The latest quarterly statistics in England for April to June 2016 show that just 60% of care or supervision proceedings were disposed of within the mandatory 26 week time limit[10], demonstrating that in many cases it is proving unworkable over 2 years after its introduction. The reference at paragraph 10.84 to the experience of Her Honour Judge Newton in Manchester family court who found the time limit "invaluable" will not suffice in providing evidence that the policy is appropriate for Northern Ireland.

147. This time limit approach is also entirely inappropriate in the context of the problem solving courts approach favoured in chapter 12 given that care proceedings will often intersect with parental problems such as substance misuse. The report highlights that at paragraph 12.23 that the problem solving approach is no quicker than traditional court proceedings with children often taking longer to be rehabilitated to parents. There is clearly a conflict between reducing delay and dealing with parental issues which will take time to properly address; a mandatory time limit will do nothing to assist in this context.

[10] Ministry of Justice, *'Family Court Statistics Quarterly England and Wales: April to June 2015'* (September 2016) at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/556715/family-court-statistics-quarterly-apr-june-2016.pdf (last accessed 18 October 2016)

91 CHICHESTER STREET
BELFAST, BT1 3JQ
NORTHERN IRELAND

Email
judithmcgimpsey@barofni.org

victoria.taylor@barofni.org

Direct Line
+44(0) 28 9056 2132

Website:
www.barofni.com

Arrangements to be agreed between social services and the health and social care trusts to ensure the timely provision of medical information in non-accidental injury cases. [FJ76]

148. This recommendation is more relevant to the social services and HSC Trusts. However, the ongoing Care Proceedings Pilot launched in December 2015 by the DOJ in conjunction with the Department of Health and the Guardian Ad Litem Agency is likely to impact in this area in the timely provision of information thus minimising unnecessary delay for children subject to public law proceedings. As part of this work the Bar responded to the NI Guardian Ad Litem consultation on Revised Court Report Templates in June 2016, highlighting that positive steps have already been taken in the reduction of repetitive material contained in HSC Trust reports. We look forward to engaging with further work on this later in the year. Quite often there is delay with obtaining papers from the PSNI investigation in circumstances when the PPS recommend no prosecution.

Judgments: All written judgments to be published to ensure transparency and public accountability, subject to appropriate steps regarding anonymisation. Steps need to be taken to ensure that there is a recording made of every court where family proceedings are heard so that, if necessary, at least a CD of the hearing can be made available upon reasonable request. [FJ77]

149. The Bar accepts that a perception exists that the family courts are secretive and lacking in transparency. The publication of judgments could assist in helping stakeholders to understand the throughput of cases at any tier of the family court. However, safeguards would need to be put in place to ensure all information is anonymised and that the parties concerned cannot be identified. Furthermore, if this recommendation is pursued our Library and Information service is well placed to collate any judgments for the benefit of distributing to practitioners and thereby helping to ensure they retain an up to date working knowledge of the development of family law in Northern Ireland. We comment further on some potential issues around the publication of judgments which would need to be considered further in Chapter 18 on Open Justice.

150. We acknowledge that there may be some benefit to recording every court where family proceedings are heard in the event that there is a requirement to examine a case in hindsight. In addition, it could assist the Bar in regulatory matters where a conduct or service complaint has been made in relation to counsel regarding their representation during the hearing. Access to a recording or transcript of proceedings could even add an element of protection for counsel when dealing with a litigant in person given that it could be dispositive of any complaint.

91 CHICHESTER STREET
BELFAST, BT1 3JQ
NORTHERN IRELAND

Email
judithmcgimpsey@barofni.org

victoria.taylor@barofni.org

Direct Line
+44(0) 28 9056 2132

Website:
www.barofni.com

Judicial Training and Leadership: The Judicial Studies Board (JSB) to develop a dedicated family training team tasked with the delivery of on-going, quality training. Attendance at training events should be mandatory. [FJ78]

151. This recommendation is not applicable to the Bar.

Experts: Trusts to be required to have all medical notes and records available when proceedings are lodged. This should ensure that the most appropriate experts are identified at the earliest stage. [FJ79]

152. Whilst the Bar recognises that this complaint is targeted at HSC Trusts, we welcome any steps taken to ensure that all relevant information is available when proceedings are lodged. Significant delays can prevent identifying the appropriate expert due to a lack of medical notes at an early stage. We believe that more consideration is required regarding a person's privacy regarding the use of their entire set of medical notes and records and whether all notes and records are necessary. Consent must be sought for the release of the records at all times.

Judges only to permit papers to be released where an expert is really necessary. Serious consideration must always be given as to whether more than one expert report is to be allowed in any discipline. [FJ80]

153. This is the current practice.

Judges to make it clear that the fact that an expert's opinion is unfavourable is not necessarily a ground for allowing papers to be released to another expert, unless some factual error was apparent or the methodology was questionable. [FJ81]

154. This is the current practice.

Limits to be placed on the volume of documentation which is forwarded to experts and the number and range of questions which they are instructed to answer. [FJ82]

155. The Bar accepts this recommendation with the judiciary already adopting this approach in many cases. However, flexibility must be retained to allow for exceptions when absolutely necessary.

Judges to be encouraged to place limits on the length of expert reports. [FJ83]

91 CHICHESTER STREET
BELFAST, BT1 3JQ
NORTHERN IRELAND

Email
judithmcgimpsey@barofni.org

victoria.taylor@barofni.org

Direct Line
+44(0) 28 9056 2132

Website:
www.barofni.com

156. The Bar has no issue with this recommendation. We note the comment at paragraph 10.68 that a limit of 50 pages is favoured. However, provision must be made for this limit to be exceeded in exceptional circumstances.

A new attitude to expert evidence to be implemented. [FJ84]

157. The Bar requires further information on the exact meaning of a "*new attitude*" to expert evidence. The perceived practice that there are no joint instructions of experts, or that the Courts regularly directs another expert report on the same issue because the recommendation is unfavourable to a party is somewhat historical. The instruction of separate medical experts in cases of NAI can benefit the Court process in the long run. We agree that progress should be made by the DOJ on the development of a framework of fixed fees for experts as outlined at paragraph 10.69 of the report. We do have concern that certain cases may require longer reports at a greater cost. This can result in delay with LSA.

The Law Society to introduce a compulsory accreditation system for those solicitors accepting instructions in cases under The Children Order (Northern Ireland) 1995. Equally so, there should be accreditation for members of the Bar in this type of case. [FJ85]

158. The Bar is opposed to the recommendation of an accreditation scheme for members of the Bar in cases under The Children Order (Northern Ireland) 1995. Family practitioners are already regulated and abide by the Code of Conduct for the Bar of Northern Ireland. We take the view that an accreditation scheme cannot act as a supplementary form of regulation. This recommendation is largely redundant in light of the imminent introduction of the LSA Registration Scheme for publicly funded legal representatives.

159. The Bar is also concerned that this scheme is a misguided attempt to manage the issues which will be encountered as reductions in remuneration levels in the family courts result in a decline in the quality of advocacy secured by families. In addition, it seems unfair for the report to suggest that accreditation is appropriate for the legal profession yet training from the Judicial Studies Board will suffice for the judiciary at paragraph 10.49.

160. Consequently, the Bar fails to see any rationale at paragraph 10.71 to support the introduction of an accreditation scheme which will only add an additional layer of bureaucracy for practitioners. It is worth noting that we have no objection to the suggestion of a mandatory specialist training programme focused on family law for

91 CHICHESTER STREET
BELFAST, BT1 3JQ
NORTHERN IRELAND

Email
judithmcgimpsey@barofni.org

victoria.taylor@barofni.org

Direct Line
+44(0) 28 9056 2132

Website:
www.barofni.com

practitioners. The Family Bar Association already supports the delivery of a variety of CPD events and training that help to ensure that practitioners are kept aware of developments around family justice.

The Legal Services Agency to set up a system of accredited experts with a scale set of fees. [FJ86]

161. The management of a system of accredited experts is not for the Bar to comment on. We believe that the scrutiny of experts undertaken by the Family Court is invaluable. Experts registered with the LSA may not be effective in the Courtroom. We are disappointed that no reform has been made in this area by the DOJ despite a consultation being carried in 2015 on the use of expert witnesses in courts. Meanwhile the DOJ has sought to make considerable changes in respect of publicly funded legal representation during the same time period. The Bar highlighted in response to the Access to Justice 2 consultation submitted in February 2016 that reform in this area could represent significant cost savings for the DOJ if appropriate measures are put in place to develop a framework of fixed fees.

Single Tier System: The abolition of the FPC and FCC and the creation of a new family court. The High Court will remain as a separate entity hearing only those cases designated as being of sufficient complexity or containing novel points as to justify hearing by a High Court Judge. [FJ87]

162. The Bar is opposed to this model for the abolition of the FPC and FCC with the creation of a single family court and retention of the jurisdiction of the High Court for complex family cases as outlined in the response to recommendation 7.

Regional Models of Best Practice: All trusts should have regionally agreed, streamlined procedures relating to the family law system, and a regional model of best practice in this area should be developed. [FJ88]

163. This recommendation is not applicable to the Bar.

Role of Guardian Ad Litem in Freeing Orders: The court should have the power in exceptional circumstances to reintroduce the Guardian Ad Litem after a freeing order is made and before an application for adoption has been mounted. This is a matter that requires urgent consideration when the long overdue new Northern Ireland adoption legislation finally is introduced. [FJ89]

91 CHICHESTER STREET
BELFAST, BT1 3JQ
NORTHERN IRELAND

Email
judithmcgimpsey@barofni.org

victoria.taylor@barofni.org

Direct Line
+44(0) 28 9056 2132

Website:
www.barofni.com

164. This recommendation is not applicable to the Bar. It should be noted that this would require legislative change.

Chapter 11: Secure Accommodation Orders

Art. 44 of The Children (Northern Ireland) Order 1995 and regulations made under art. 44 to be amended to empower a judge to direct that in exceptional circumstances, where it is deemed to be in the interests of the child or public safety, the child's attendance at a secure accommodation order hearing shall be secured by way of Live Link to the institution where they are then being held. [FJ90]
As this would be a change in policy and require legislative change, the relevant department first to consult with young people, families, legal representatives and others on proposals. [FJ91]
The specific circumstances in which Live Link is to be used to be clearly identified, including agreed principles and considerations of risk. [FJ92]

165. The Bar recognises the potential benefits of the proposal for judges to hear cases by Live Link in these circumstances. It is worthwhile highlighting the experience of live links to date. Feedback from our members would indicate that on very few occasions have live links worked seamlessly. However, the impact on the rights of children and young people may outweigh any time or cost saving benefits. Any proposed policy change would require detailed public statutory consultation with young people, families, legal representatives and others before being considered for introduction.

Chapter 12: Problem Solving Courts

Problem solving courts to be established in Northern Ireland as a means of reducing the societal harm caused by domestic violence and abuse and by substance misuse. [FJ93]

166. The Bar accepts that there is merit in the establishment of problem solving courts in Northern Ireland. We engaged with the work of the Assembly's Justice Committee in 2015-16 exploring the potential introduction of these courts as an innovative and effective approach to some of the pressures and challenges within the justice system. However, we do have some broader concerns around the potential for the establishment of these courts given the collaborative and joined-up approach that will be required between the Department of Health and Department of Justice in committing to furthering this work. There is clearly a question around the potential availability of funding given the budgetary pressures already being experienced across Government Departments.

91 CHICHESTER STREET
BELFAST, BT1 3JQ
NORTHERN IRELAND

Email
judithmcgimpsey@barofni.org

victoria.taylor@barofni.org

Direct Line
+44(0) 28 9056 2132

Website:
www.barofni.com

The Domestic Violence Listing Arrangement pilot in Londonderry to be enhanced, initially to improve support for victims and provide for court-supervised offender programmes and, thereafter, to encompass civil proceedings. [FJ94]

167. The Bar accepts the recommendation that the Domestic Violence Listing Arrangement pilot in Londonderry be enhanced. However, we would query how it is envisaged that this will work in conjunction with the wider problem solving courts agenda. Counsel have concerns around how problems will be classified and triaged by the courts given that a range of issues will often be entwined in a particular case. For example, a family case may involve substance abuse and addiction issues as well as allegations of domestic abuse and violence. It will be vital that the problems are identified as soon as possible in order to ensure that parents are offered the appropriate support services. The proposed enhancement of the DVLA pilot to encompass civil proceedings envisages an eventual combination of criminal and civil proceedings within one court. Given different standards of proof within each, there is a risk of evidential blurring between the two which may undermine Article 6 rights of those affected.

Consideration to be urgently given to establishing a new Family Drug and Alcohol Court, based on the English model, initially as a pilot scheme, in parallel with the development of the planned Addiction Court pilot. [FJ95]

168. The Bar notes that the report appears to favour the model of a Family Drug and Alcohol Court which is already operating in England. The report quotes research from the Nuffield Foundation outlining the effectiveness of the multi-disciplinary approach to substance misuse issues at paragraph 12.21. However, we consider that further research work specific to the areas of need in relation to substance misuse in Northern Ireland and in depth multi disciplinary consultation with medical and psychological experts would need to be conducted before the DOJ could consider the establishment of an appropriately targeted pilot project. We note that the Drug and Alcohol Courts in England was originally funded by the Department of Education. We understand that currently it is being funded by local councils and attempts at charity funding. We query the ability for the Department of Justice with the Department of Health to fund the Courts if deemed necessary post consultation.

Chapter 13: Child Abduction

Child Abduction between Convention Countries: A protocol or guidance to be drawn up to ensure compliance with the recommended timeframe in Hague cases and which provides for a written statement of reasons why the parents in a particular case cannot comply. [FJ96]

91 CHICHESTER STREET
BELFAST, BT1 3JQ
NORTHERN IRELAND

Email
judithmcgimpsey@barofni.org

victoria.taylor@barofni.org

Direct Line
+44(0) 28 9056 2132

Website:
www.barofni.com

169. The Bar has no difficulty with this recommendation in principle. We do note that there is already good practice in place in respect of timeframes. We query if the requirement of a written statement could lead to unnecessary delay in the proceedings. The Trial Judge should be at liberty to direct same as and when it is appropriate. We would expect to be consulted on the details of any such protocol if it is taken forward.

Greater emphasis on obtaining at the earliest date, from Northern Ireland and from the other country involved, all relevant records. Central authorities should as a priority gather documents from the very first indication that there are to be proceedings. [FJ97]

170. The Bar accepts that improved access to relevant records from Northern Ireland and the other country involved will ultimately make proceedings easer.

A protocol or guidance to be drawn up (perhaps after a multi-disciplinary recommendation from the Family Justice Board), as to how the voice of the child can be effectively considered in Hague cases. [FJ98]

171. The Bar is content to agree with this proposal in principle given that it is vitally important that the voice of the child is effectively considered in Hague cases. This role is currently undertaken by the Official Solicitor. It is our understanding from practice that this does not pose a problem. If there are problems, we believe these should be discussed in the appropriate forum. COAC would be ideally placed to consider this recommendation further. The Bar would expect to be consulted further in due course on any protocol or guidance. We also consider that input from the children's sector statutory and voluntary bodies would be useful.

Judges in Hague cases in every instance, at the earliest stage available, to consider the advisability of mediation with mediators who are well versed in the procedures unique to such cases. [FJ99]

172. Family practitioners instructed in this area of work engage in early negotiations and we query the evidence base to suggest that current representation in Northern Ireland does not successfully deal with the issues raised in each case. The Bar would query the degree to which mediation can be used to achieve a successful outcome in Hague cases with potential issues around the enforcement or binding nature of outcomes across borders. In addition, the use of international mediation could take time to organise and should not add any delays to the

91 CHICHESTER STREET
BELFAST, BT1 3JQ
NORTHERN IRELAND

Email
judithmcgimpsey@barofni.org

victoria.taylor@barofni.org

Direct Line
+44(0) 28 9056 2132

Website:
www.barofni.com

commencement of court proceedings. Furthermore, it remains unclear where the necessary funding for such mediations will come from.

Judges in Hague cases regularly to inquire at the outset if the legal representatives are fully conversant with the European Union Mediation Directive and with the Hague Conference Guide to Good Practice on Mediation in Child Abduction work. [FJ100]

173. The Bar has no issue with this recommendation and would be content to make the European Union Mediation Directive and the Hague Guide to Good Practice on Mediation in Child Abduction Work available to the membership through the Library and Information Service. A large number of Family Barristers are trained mediators and therefore are already aware of the Directive and those who specialise in Hague Convention Cases are familiar with the Hague Good Practice. We believe that more use should be made of the high level of skill and specialism that exists in the Family Bar in both mediation and Hague Convention cases. We believe that if mediation is encouraged rather that the current practice of negotiation, funding is required. The parties involved in the mediation process should have legal representation as well as and not in lieu of the mediator as their legal rights and obligations are fully engaged in these cases.

The Directive and the Guide to be part of the authorities bundle in most if not all Hague cases. [FJ101]

174. The Bar is content to accept this recommendation.

Consideration of a specific change in the rules so that the period for lodging an appeal in such cases is shortened. [FJ102]

175. The Bar believes that the right of appeal and the time frames in relation to this should be protected. However, we recognise the existence of an international obligation for these proceedings to be heard within six weeks and would be open to considering the options for any change considered by the Rules Committee in due course if this is pursued.

Northern Irish practitioners to participate in the Hague Bureau and should make a special point of submitting papers to the Hague Conferences which regularly take place. [FJ103]

91 CHICHESTER STREET
BELFAST, BT1 3JQ
NORTHERN IRELAND

Email
judithmcgimpsey@barofni.org

victoria.taylor@barofni.org

Direct Line
+44(0) 28 9056 2132

Website:
www.barofni.com

176. The Bar welcomes this recommendation and would strongly encourage practitioners in the Family Bar Association to consider submitting papers to the Hague Conferences.

A specialist legal group to be set up in Northern Ireland – comprising judiciary, Family Bar, Law Society and Central Authority - to advise and update practice and procedure in Hague cases. [FJ104]

177. The Bar welcomes this recommendation.

Department of Justice and the Legal Services Agency to consider as soon possible revisiting the approach to handling defendants' applications under the Hague Convention and to secure compliance with Council Directive 2002/8/EC of 27 January 2003 and the general approach to Brussels IIR cases. [FJ105]

178. The Bar accepts this recommendation given that an obligation exists under Council Directive 2002/8/EC of 27 January 2003 to ensure the establishment of minimum common rules relating to legal aid for these disputes. The observation in the report at paragraph 13.39 that parents who can hardly speak English could be obliged to conduct the defence of a child abduction case as a litigant in person is entirely unacceptable and clearly risks breaching the six week time limit. The Department of Justice should consider revisiting the statutory criteria and making special provision for legal representation of parents in such cases. We believe that automatic entitlement to legal aid is essential to ensure effective representation, prevent delay and in the long run ensures that the outcome is indeed in the best interests of the child.

International Abductions involving Non-Hague Countries: Judicial liaison to be used in this area and we encourage that practice. [FJ106]

179. The Bar recognises the benefit of this practice and agrees with the recommendation.

Practitioners to be encouraged to seek consular assistance. [FJ107]

180. The Bar recognises the benefit of this practice and agrees with the recommendation.

91 CHICHESTER STREET
BELFAST, BT1 3JQ
NORTHERN IRELAND

Email
judithmcgimpsey@barofni.org

victoria.taylor@barofni.org

Direct Line
+44(0) 28 9056 2132

Website:
www.barofni.com

The Family Bar Association and the Law Society to take proactive steps to set up training sessions to ensure practitioners become more aware of the provisions of the Brussels II regime. [FJ108]

181. The Bar has no difficulty with this recommendation. The Family Bar Association delivers a range of training to family law practitioners and will endeavour to incorporate this into the programme of work on an ongoing basis. The Family Bar is engaging in a consultation process regarding Brussels II. The impact of Brexit remains unclear.The Bar believes that further awareness of the problem of child removal within the UK is of growing concern and this should not be ignored either in regards to training and funding.

A judge to be appointed as an international liaison judge (perhaps the current serving Hague Convention liaison judge) to develop already existing and new international contacts, sustain contact with family judges internationally and keep abreast of developments. [FJ109]

182. The Bar has no difficulty with this recommendation.

Chapter 14: Paperless Courts

Within 12 months from the date of this Report, the Bar Council, the Law Society and NICTS to collaborate to draw up a best practice protocol regarding e-files, electronic bundles, electronic applications and electronic file management systems. That best practice document should form the basis for the area chosen for a pilot scheme and as a basis for further dissemination. [FJ110]

A family court centre to be thereafter selected as a pilot scheme for hearings listed from that date involving the use of e-files, narrow scope electronic bundles and virtual reality hearings in appropriate instances unless directed otherwise by the judge. That should become a key component of all case management hearings at an early stage. Within 24-36 months all family justice cases should use these processes. [FJ111]

183. The Bar accepts that there is a role for the increased use of technology across the court system. However, we take issue with the use of one family court judge's experience in Manchester being used in support of the paperless concept in public law cases at paragraph 14.12. Meanwhile "conversations with Judge Horgan" in the Republic of Ireland are referenced at paragraph 14.24 to describe the progress in this jurisdiction. We believe that a wider assessment of the benefits of relevant developments in England and elsewhere would be more helpful in determining which aspects of this technology might be most useful in Northern

91 CHICHESTER STREET
BELFAST, BT1 3JQ
NORTHERN IRELAND

Email
judithmcgimpsey@barofni.org

victoria.taylor@barofni.org

Direct Line
+44(0) 28 9056 2132

Website:
www.barofni.com

Ireland's court system. We question the cost of ensuring the compatibility of all computer software, security and data protection issues and how the litigant in person is accommodated.

184. The Bar is content to work in partnership with others to determine areas of best practice in relation to electronic systems. However, any changes will require considerable investment in IT infrastructure by the NICTS, including a rigorous security system to deal with any data protection and confidentiality issues. Extensive training will also be required for the judiciary, NICTS staff and practitioners. It would undoubtedly be beneficial for the initial financial outlay to be considered further by the Department before any action is taken in relation to how a pilot scheme might work.

In the family division, all "no fault" divorce applications, unless otherwise directed by the Master or the judge, to be processed by way of online applications as soon as the relevant legislation is passed. [FJ112]

185. The Bar has no particular issue with further consideration being given to simplifying the divorce process through the potential for online applications in cases involving no fault divorce applications. We refer to our earlier comments regarding online divorces.

A full review of the use of this system in the family division to take place within one year of its inception – that is, within 24 months of this Report – by the Family Justice Board or such body as the Lord Chief Justice sets up to consider it. [FJ113]

186. The Family Division Liaison Committee chaired by the Family Judge could review the introduction of any changes to the current system regarding divorce petitions. A timeline now may be redundant before there are costings of any change and funding identified to implement the changes. Given that Counsel are still awaiting access to ICOS in the family courts and our understanding that ICOS may not be able to cope with many changes required for other reviews regarding funding and the reported problems with CJSM, we query if the timeline suggested is too ambitious in the current financial climate. It may be helpful if the cost of the Historical Abuse Enquiry was considered when there is further consideration of this recommendation.

NICTS to take steps to ensure that all arrangements adopted now regarding efiles and electronic bundles will be compatible with any future implementation of a fuller electronic file management system, the same to be set up within two years from the

91 CHICHESTER STREET
BELFAST, BT1 3JQ
NORTHERN IRELAND

Email
judithmcgimpsey@barofni.org

victoria.taylor@barofni.org

Direct Line
+44(0) 28 9056 2132

Website:
www.barofni.com

date of the publication of this Report. [FJ114]

187. The Bar would query the ability of NICTS to implement an electronic file management system within two years given the considerable cost implications that would be inherent in this.

NICTS to set up and service an online special support system for the benefit of non-users of the internet. This must ensure that potential litigants who are incapable of access to internet are not marginalised. [FJ115]

188. The Bar requires further information on this recommendation before being able to comment in full. However, we are presently unsure as to how the creation of an online support system for litigants who are non-internet users would assist in ensuring that they are not marginalised. We would query how these litigants would be expected to be able to navigate any online system.

Any system of regulation for the use of electronic bundles, applications or file management systems to retain the flexibility to allow parties to transfer from the electronic administration affairs to the traditional paper form at the discretion of the Master or the judge. [FJ116]

189. The Bar has no difficulty with this recommendation given that allowing the court flexibility around the use of technology will always be necessary depending on the circumstances of a particular case and the parties involved.

Any digital filing solution to ensure the security of the data being stored and prevent unauthorised access to electronic court files. NICTS should immediately undertake steps to ensure this protection is secured. [FJ117]

190. The Bar agrees that data security will form a vitally important part of any digital filing solution. However, we would query the ability of the NICTS to undertake steps to manage this immediately given the cost and other budgetary pressures presently being experienced across the court estate.

The Judicial Studies Board, Bar Council and Law Society to provide, as soon as practicable, appropriate training seminars to meet the new digitisation system. [FJ118]

91 CHICHESTER STREET
BELFAST, BT1 3JQ
NORTHERN IRELAND

Email
judithmcgimpsey@barofni.org

victoria.taylor@barofni.org

Direct Line
+44(0) 28 9056 2132

Website:
www.barofni.com

191. The Bar has no difficulty with this recommendation. The Family Bar Association delivers a range of training to family law practitioners and could develop a programme of work relevant to any digitisation developments in due course.

The relevant rules committees to consider the necessary rule changes to implement this process. [FJ119]

192. This recommendation is not applicable to the Bar.

Chapter 15: Disclosure

The implementation by the Senior Family Judge of a practice direction along the English lines for Northern Ireland. [FJ120]

193. The Bar would require more information on any proposed restriction on page limits contained in bundles before being able to comment in full. We also take issue with the suggestion at paragraph 15.1 that "*the photocopier has become a substitute for thought*" as counsel in the family courts routinely take care to be as thorough as possible in including everything of relevance in a bundle thereby avoiding any deficiencies for the benefit of the judge in a particular case. Timely discovery of all documents would enable Counsel to narrow the documentation to a core bundle. Deciding what is or is not relevant by reducing it to a number count may impact on the information necessary for the hearing.

194. This recommendation appears to follow the developments in England where the President of the Family Division recently consulted on page limits for certain types of document. It would be worth waiting to ascertain whether these changes are adopted in England and the impact that they have before they are considered appropriate for the courts in NI. The Family Bar Association would want to be involved in contributing to the development of any future practice direction and would be keen to stress that flexibility around disclosure must always be retained in the system.

Chapter 16: The Voice of the Child and Vulnerable Adults

Every family judge to receive training in the art of interviewing children and child development. [FJ121]

195. This recommendation is not applicable to the Bar.

91 CHICHESTER STREET
BELFAST, BT1 3JQ
NORTHERN IRELAND

Email
judithmcgimpsey@barofni.org

victoria.taylor@barofni.org

Direct Line
+44(0) 28 9056 2132

Website:
www.barofni.com

Judges to determine at an early stage whether or not it is in the child's interest for the child to be interviewed personally by them and where the decision is made not to interview directly, this should be kept under review as the case proceeds. [FJ122]

196. Current practice entails the Guardian ad Litem with the child's solicitor discussing the issue with the child in public law cases if they want to speak or meet with the Judge or write to the Judge. Therefore the Court is aware at the very early outset of the child's wishes and feelings in that regard. If the child wishes to speak to the Judge, it is essential that the purpose of the interview is made clear to all the parties in the proceedings to ensure that no one places any undue influence on the child or has expectations that the Judge will ultimately agree with the child's views. If a child has made known their desire to speak to the Judge, timing of same could be crucial. A record of what is said by both the Judge and the child is required and shared with the parties. They should be afforded the opportunity to make representations if necessary. If the case is one whereby Re W principles have been applied and the Court directs that the child gives evidence, we question whether an interview with a child could blur the lines between the Judge hearing the voice of the child and the Judge determining whether the allegations made by the child are on the balance of probabilities proved so consideration of this issue must also be taken into consideration.

197. In private law proceedings, the child does not have the same protection afforded to it via the services of the Guardian ad Litem save their views are recorded by the Children's Court Officer. In certain circumstances the Official Solicitor will represent the child. The same caveat applies. The same caveats apply.

The Bar Council and the Law Society to introduce guidance and specialist training for those questioning children and the vulnerable. [FJ123]

198. We assume that this relates to the questioning of children who give evidence in family proceedings after consideration of Re W principles are considered. If so, we agree that ongoing training by the Family Bar Association is required and currently CPD is being organised in relation to this issue. If this relates to consulting with the children, it is not clear that there is a problem with current practice. If there is evidence to suggest that this is a problem again this should be raised via the current forum of COAC.

Family courts to be open to pre-recording of evidential interviews, pre-court familiarisation, court supporters and special measures such as Live Link and screens. [FJ124]

91 CHICHESTER STREET
BELFAST, BT1 3JQ
NORTHERN IRELAND

Email
judithmcgimpsey@barofni.org

victoria.taylor@barofni.org

Direct Line
+44(0) 28 9056 2132

Website:
www.barofni.com

199. The Bar is assuming that this relates to the cases whereby a child is called to give evidence as currently the child gets much support from the Guardian ad Litem, their solicitor, the official solicitor if appointed or VOYPIC if the child has agreed to engage with that service. Pre-court familiarisation is practiced by the Guardian ad Litems and solicitors in circumstances when the child is being brought to Court to meet and talk with the Judge.

200. If the suggestion relates to cases whereby the child is to give evidence or in cases involving a vulnerable adult, the Bar has no difficulty with this suggestion in principle given that it could provide valuable assistance to vulnerable individuals in the family courts, including children. We expect that this recommendation would be subject to a wider consultation with interested stakeholders before the Department would consider introducing any legislative amendments around special measures in the family courts. We believe that a multi- disciplinary review is essential. This should involve the Guardian ad Litem Agency, the Official Solicitors, Children Court Officers and other Trust representatives including those working in mental health services for both adults and children and young adults. Voluntary organisations /NGO such as VOYPIC, Mencap and NSPCC are essential, as well as the Children's Law Centre and members from both legal professions and the Courts. We believe that the aim of this group should be first ascertaining how acute the problem may be in the first place and if there is a need that is identified consider a way forward which suits Northern Ireland and can provide a co-ordinated approach across the Court tiers and Trust areas is welcome.

201. It might also be worthwhile to explore the situation in England where the President of the Family Division established the Vulnerable Witnesses and Children Working Group in 2014 to examine how a child can participate in family proceedings and the provision for the identification of vulnerable witnesses. The Working Group published its report in March 2015 following extensive consultation and included a set of draft model rules which the Family Procedure Rule Committee considered before issuing these for consultation. This consultation closed in September 2015 with further steps yet to be taken. We consider that developments in England should be closely monitored before any further steps are taken in the family courts in Northern Ireland.

Registered intermediaries to be introduced into the family justice system with the power of the court to appoint them. In this context, courts should consider putting the required questions to a vulnerable witness through an intermediary. This could be done by the court itself, as would be common in continental Europe. [FJ125] As a first step, Registered Intermediaries (RIs) to be introduced for a specific part of

91 CHICHESTER STREET
BELFAST, BT1 3JQ
NORTHERN IRELAND

Email
judithmcgimpsey@barofni.org

victoria.taylor@barofni.org

Direct Line
+44(0) 28 9056 2132

Website:
www.barofni.com

civil justice, namely family justice, on a non-statutory basis. Referrals for RI assistance could be limited to cases where the securing the evidence of the vulnerable witness was of particular importance for the effective conduct of court business. [FJ126]

This to be done administratively in the first instance using the court's inherent powers for a pilot scheme in Belfast Family Proceedings Court and Family Care Centre, where there would be sufficient numbers to allow a proper evaluation. Whilst it would be cheaper to permit it in smaller jurisdictions - such as Craigavon, where there are fewer cases - this would diminish the evaluation process. A pilot would demonstrate that the costs are justified by the benefits – better client experiences, most effective use of court time and compliance with Articles 6 and 8 of the European Convention on Human Rights. [FJ127]

202. If a need for such a system for Northern Ireland is identified, we believe that the multi disciplinary group suggested should obtain feedback regarding the effectiveness and limitations of registered intermediaries in the criminal justice system in Northern Ireland. An evaluation regarding the impact and effectiveness in England and Wales is further required. This work needs to be undertaken before there is consideration to develop a bespoke system is for the family courts in Northern Ireland in the form of a pilot project. A cost evaluation is required. Given the increase in areas in the Craigavon area we are not sure if indeed this is the smaller jurisdiction it once was.

203. We note that the pilot is being considered for the FPC. Due to the recent changes in the provision of representation in the FPC, Counsel are no longer certified by the LSA to appear in such cases. Given the complex legal and evidential issues, we believe that these cases require legal expertise of the type only provided by the specialist Family Bar to ensure compliance with the state's obligations in International Conventions (such as Article 6) and domestic legislation and therefore, should be heard in the higher courts.

The Department of Justice to explore with NSPCC the potential for the Young Witness Service, which currently supports child witnesses in the criminal justice system, to be extended to the family court. This should initially take the form of a pilot to identify the costs and benefits that would be associated with a full roll-out. [FJ128]

204. The Bar has no difficulty with this recommendation. Whilst the establishment of any pilot scheme is an operational matter for the DOJ and the NSPCC, we would query the financial ramifications for the court system. We believe that there needs to be engagement with other parties including the Guardian ad Litem

91 CHICHESTER STREET
BELFAST, BT1 3JQ
NORTHERN IRELAND

Email
judithmcgimpsey@barofni.org

victoria.taylor@barofni.org

Direct Line
+44(0) 28 9056 2132

Website:
www.barofni.com

Agency, Mencap, VOYPIC and the Children's Law Centre as well as both legal professions in this consultation process.

The formation of a Family Justice Board, if adopted, to take up this issue of children and vulnerable adults in the family courts, carry out further research and make further appropriate recommendations. [FJ129]

205. The Bar suggests that COAC could carry out this research or appoint a multi-disciplinary sub group to look at this issue.

Chapter 17: The Court Setting

No change in the current formal setting of the family courts or the nomenclature used, although this is a classic example of how the Family Justice Board could revisit the matter as time passes and experience evolves. [FJ130]

206. The Bar accepts this recommendation. We endorse the contents of paragraph 17.6 of the report. We firmly believe that when persons attend court especially for the hearing; the powers of the Court should not be diminished by changes in an attempt to make it appear more user friendly to such an extent that the consequence is to diminish the much needed respect for the Rule of law. When the Judge decides that the issues requires a hearing as all other attempts to resolve the matter have failed the fact, the courtroom becomes the arena where evidence is given and adjudicated. Serious decisions are made which could have life altering consequences for the family. Sometimes the back drop of a hearing in a court room is extremely useful as Counsel continue to engage in negotiation until the hearing commences. All Counsel continue to robe for final hearings in the Care Centre and the High Court and the FBA are considering the reintroduction of robes for directions hearings. We do believe that the provision of suitable consultation rooms or space for consultations/negotiations outside the Court room is an area which needs improvement but again this is subject to funding.

A renewed emphasis on the use of plain and simple language by judiciary and the legal profession in family courts. [FJ131]

207. The Bar takes the view that the judiciary and legal professions have made considerable efforts in recent years to communicate with the courtroom in a clear and informal way. However, we would caution that judges and counsel are often dealing with complex areas and law and multifaceted issues in family cases which can only be simplified to a certain degree through the use of plain and simple language.

91 CHICHESTER STREET
BELFAST, BT1 3JQ
NORTHERN IRELAND

Email
judithmcgimpsey@barofni.org

victoria.taylor@barofni.org

Direct Line
+44(0) 28 9056 2132

Website:
www.barofni.com

No change in the role of the lay magistracy in the family courts. [FJ132]

208. The Bar accepts this recommendation.

Chapter 18: Open Justice

The rights of the media to attend fact finding hearings and other family courts in Northern Ireland to be brought into line with the position in the rest of the UK and Ireland. We recommend the introduction of rules similar to r. 27.10(2), r. 27.11(2) of the FPR in England and Wales. [FJ133] The law to remain that the media are unable to report what they saw, heard or read within the proceedings without permission of the court but the family court and the High Court should have the power to relax the prohibition on reporting in a case-by-case basis by means of a rule similar to FPR 2010, r. 12.73. [FJ134]

209. The Bar accepts that a perception exists that the family courts are lacking in transparency and that there is merit in addressing public confidence in the family courts in an effort to aid understanding of the work undertaken at each court tier. However, we are concerned that there are inherent difficulties in balancing the public's right to know with the family's right to privacy. There is a clear risk in care proceedings to a vulnerable child and the impact of the inevitable trauma that their details could be made public. The Children (Northern Ireland) Order 1995 puts the child's welfare as the "*paramount consideration*" in these cases yet harm could result from allowing media access if anonymisation fails to operate effectively and enough information is released to allow for the identification of a child. The issue of jigsaw identification is a distinct possibility in a small jurisdiction like Northern Ireland. Furthermore, the potential for media sensationalism extends beyond Children Order cases and into other areas of family law, including divorce and ancillary relief.

210. The Bar believes that further research is required analysing the factors influencing whether and how family court judgments are made public in England and Wales. Recent studies in this field have shown that there are major difficulties in effectively anonymising judgments and young people are very concerned that judgments can enable some children and families to be identified.[11] The prospect

[11] National Youth Advocacy Service and Association of Lawyers for Children, *'A review of anonymised judgments on Bailii: Children, privacy and jigsaw identification'* (October 2015) at http://www.familylaw.co.uk/system/redactor_assets/documents/3417/Brophy_-_Judgments_on_Bailii_and_Childrens_privacy_and_safety_-_FINAL_REPORT_Oct_15_.pdf (last accessed 20 October 2016)

91 CHICHESTER STREET
BELFAST, BT1 3JQ
NORTHERN IRELAND

Email
judithmcgimpsey@barofni.org

victoria.taylor@barofni.org

Direct Line
+44(0) 28 9056 2132

Website:
www.barofni.com

of contempt of court proceedings in the case of a breach of privacy did not change their views. The process of anonymisation in England and Wales clearly requires review. There are also indications that children and young people themselves may not welcome a media presence within the family courts.[12]

211. We believe that Northern Ireland's courts should not seek to follow the approach taken by the President of the Family Division in England simply for the sake of it at present when issues are already evident. We concur with the views of the Children's Law Centre and Children's Commissioner at paragraph 18.42 calling for a full public consultation exercise on any policy change in this area to ascertain the views of relevant stakeholders, including children, before any further action is taken.

Every court to have a proper procedure for ensuring that adequate steps are taken to draw any discretionary restriction order to the attention of media representatives who may not have been in court when the order was made. A judge should ensure the procedure has been followed. [FJ135] However, the obligation to remain on the media to ensure that they take the appropriate steps to make themselves aware of any discretionary reporting restrictions and to comply fully with them.122 [FJ136]

212. These recommendations are not applicable to the Bar.

The senior Family Judge to secure the drafting of a similar practice note or guidance on the publication of judgments as that drawn up in England in January 2014 and exhibited at Appendix 6 to this report. [FJ137]

213. The Bar has outlined our concerns around anonymisation in the publication of judgments above in response to recommendations 133 and 134. Subject to these problems being adequately addressed and this recommendation being taken forward, the Family Bar Association would expect to be consulted in relation to the development of any draft practice guidance.

In order to secure consistency of approach across all family courts in the making of reporting restriction orders, a practice note similar to that drawn up in England in August 2014, containing links to model forms for both draft orders and explanatory notes, to be created. [FJ138]

[12] Brophy, J, *'Irreconcilable differences? Young people, safeguarding and the "next steps" in "transparency'* [2015] Fam Law 1685

91 CHICHESTER STREET
BELFAST, BT1 3JQ
NORTHERN IRELAND

Email
judithmcgimpsey@barofni.org

victoria.taylor@barofni.org

Direct Line
+44(0) 28 9056 2132

Website:
www.barofni.com

214. The Family Bar Association would expect to be consulted on the detail of this practice note should this recommendation be taken forward.

In the event that daily reporting is likely to be permitted, detailed arrangements to be put in place to maintain control on the material that can be reported by press representatives who are attending court. [FJ139]

215. The Bar considers that it will be a difficult to achieve a balance between daily reporting by the press and ensuring the appropriate flow of court proceedings without interruption. We would require further information on any detailed arrangements before being to comment in full. However, the most proportionate approach might be the one outlined at paragraph 18.51 around only making allowances for reporting after the court proceedings have concluded on any given day in order to ensure that the court has had the opportunity to consider whether any additional directions are required.

216. Meanwhile we believe that any future use of social media such as Twitter in the family courts would also have to be considered separately for further direction and restriction given that unpredictable and sensitive issues can arise at any stage during a family court hearing.

A joint protocol between the judiciary, the profession and the representative body for the press in Northern Ireland outlining guidelines for reporting cases in the family division. [FJ140]

217. The Bar believes that the development of a robust set of guidelines would be essential for the reporting of family cases. However, we would require further detail before being able to comment more fully and the Family Bar Association would expect to be consulted on any protocol. This would be helpful in ensuring that the membership is informed and aware of any reporting allowed in the family courts.

Consideration be given to the means of securing the service of applications for reporting restriction orders on the national and local media through a press association copy direct service. [FJ141]

218. This recommendation is not applicable to the Bar.

91 CHICHESTER STREET
BELFAST, BT1 3JQ
NORTHERN IRELAND

Email
judithmcgimpsey@barofni.org

victoria.taylor@barofni.org

Direct Line
+44(0) 28 9056 2132

Website:
www.barofni.com

Northern Ireland Courts & Tribunals Services' ICOS System now to record all non-automatic reporting restrictions against the name of the case to which it applies. [FJ142]

219. This recommendation is not applicable to the Bar.

Chapter 19: Personal Litigants

The first hearing in family proceedings involving personal litigants should be regarded as a ground rules setting or case management opportunity. The judge should take time to advise on such matters as:

- the benefits of legal advice and the availability of pro bono and
- voluntary services;
- what is expected from all parties;
- time limits on applications and, indeed, submissions if necessary;
- skeleton arguments, including the suggested length of these;
- interlocutory concepts;
- what the case is essentially about;
- defining the issues as early as possible;
- options to resolve the case outside the court as well as inside the court;
- the outline of the process, including the nature of reviews, examination in chief, cross examination, disclosure, the role of experts, timetabling, the role of the Guardian Ad Litem, etc. so that there are no unrealistic expectations; and
- the consequences of failure to comply with court orders. [FJ143]

220. The Bar acknowledges that family law practitioners have encountered increasing numbers of personal litigants in recent years. We note the suggestion of a first hearing being used as a "*ground rules setting or case management opportunity*". However, our practitioners highlight that additional time and money is already being spent accommodating the needs of litigants in person at all stages of the court process. Judges are already required to take extra care and considerably more time to explain how practice, procedure, the law, rules and regulations pertain to any particular case.

221. Whilst the NICTS will may wish to consider these extra steps outlined in the recommendation to deal with litigants in person, we would query the potential cost of this in terms of delays to other cases, to the represented party and the extra judicial time this will require. We would also caution that any of these steps aimed at facilitating access to justice for personal litigants will need careful scrutiny to ensure that they do not place represented opponents at a

91 CHICHESTER STREET
BELFAST, BT1 3JQ
NORTHERN IRELAND

Email
judithmcgimpsey@barofni.org

victoria.taylor@barofni.org

Direct Line
+44(0) 28 9056 2132

Website:
www.barofni.com

disadvantage; adherence to the Rules of Court and clearly accessible Practice Directions must not be side-lined to the detriment of the court system.

All Judges to be familiar with and guided by the current Equal Treatment Bench Book. They should be alert to personal litigants who may have a disability such as an autistic spectrum condition and be ready to make appropriate adjustments to procedures to accommodate this from the outset. [FJ144]

222. This recommendation is not applicable to the Bar.

The use of an inquisitorial approach to be considered in appropriate cases where personal litigants are involved. A change in the rules should be implemented to facilitate this. [FJ145]

223. The Bar would require further information on the meaning of the application of this "inquisitorial approach" before being able to comment in full. We would query the basis for this recommendation. As previously stated the Children's Court is quasi inquisitorial and there is a danger of introducing two different systems, one for the represented and one for the litigant in person. We would also request evidence or research to show how it is envisaged that this might improve proceedings for personal litigants. The example of the approach taken in one civil libel action at paragraph 19.39 does not suffice to recommend application across the family courts. We also have a number of additional queries that would need to be clarified. Would this be a blanket approach be applied in all cases involving a personal litigant? Would it be subject to the discretion of the judge? Would another party that has secured representation be placed at a disadvantage through this approach?

A renewed emphasis by judiciary, the professions and other family law participants on use of appropriate, plain and readily understandable language in the family division. Courts should be proactively interventionist to ensure this occurs. [FJ146]

224. The Bar considers this to be very similar to recommendation 131.

Where appropriate, courts to consider fixing specific time periods for hearings, provided there is some inbuilt measure of flexibility. [FJ147]

225. The Bar would require more information around how fixed time periods for hearings would work practically before being able to comment in full. We refer to

91 CHICHESTER STREET
BELFAST, BT1 3JQ
NORTHERN IRELAND

Email
judithmcgimpsey@barofni.org

victoria.taylor@barofni.org

Direct Line
+44(0) 28 9056 2132

Website:
www.barofni.com

our response to streamlining the system. However, if there is to a pilot, it is also worth noting that fair trial rights cannot always be delivered within a pre-defined time period and a move towards time limiting cases for a certain period could also place a burdensome workload upon judges and court staff. Flexibility will always be required given that any pilot would need to reflect realistic estimates of how long an individual case might take based on the parties and issues involved in a family case.

A booklet, similar to the existing booklet which is given to all personal litigants in the High Court to be drawn up for all personal litigants in the family division highlighting, for example, opportunities for assistance. The current High Court booklet has been criticised by some personal litigants as employing insufficiently plain language and this error must not be repeated. Paperwork and processes should be designed with the layperson in mind. The Northern Ireland Courts & Tribunals Service (NICTS) should conduct a review of current forms to ensure they are appropriately plain and comprehensive for all court users. [FJ148]

226. The Bar has no issue with the NICTS developing a booklet for personal litigants and conducting a review of current forms to ensure that they are user friendly.

A much needed guide similar to the English version of "Sorting Out Finances on Divorce", intended to demystify this complex area, to be a task for the new Family Justice Board. [FJ149]

227. The Bar urges caution. It is worth bearing in mind that this is a complex area of law which can only be simplified to a certain degree. We note that the English guide produced by the Family Justice Council is 55 pages long which some personal litigants would still find difficult to understand and intimidating. Therefore we would also query whether the proposed Family Justice Board would have the capacity to consider a shorter version given that the charity Advice Now produced this in England as referenced at paragraph 19.43.

NICTS to revisit its current website to establish a single authoritative website providing an online, objective information hub in family cases with an added emphasis given to support for vulnerable people. It should be more easily accessed. Vulnerable groups, such as people with mental health problems, should be signposted to appropriate services. [FJ150]

228. The Bar agrees that the NICTS should invest in significant improvements to its website to ensure that it is fit for purpose. Members of the public should have access to relevant and easily understandable information in family cases. We note

91 CHICHESTER STREET
BELFAST, BT1 3JQ
NORTHERN IRELAND

Email
judithmcgimpsey@barofni.org

victoria.taylor@barofni.org

Direct Line
+44(0) 28 9056 2132

Website:
www.barofni.com

paragraph 19.30 which appears to model the establishment of an online information hub on the Advice Now website in England run by Law for Life. Paragraph 19.29 states that Her Majesty's Courts and Tribunals Service provided all the law to Advice Now which the organisation then translated into simple language. However, we would query the ability of the NICTS to embark on a similar venture to this charitable group given the time and expenditure that would be required.

The online advice line and staffed centre to provide accessible and easy to understand guidance for personal litigants in the magistrates court, county court and the High Court. [FJ151]
A move away from the conventional printed fact sheets and a more interactive approach adopted. [FJ152]
Consideration to be given to a central information hub located in specified court buildings (e.g. Laganside in Belfast), which would be staffed by at least one person trained by NICTS specifically to assist personal litigants. [FJ153]

229. These suggestions appear very similar to recommendation 42 in chapter 8 and our comments in response to this should also be considered. We note that the idea of a central information hub potentially located in Laganside Court re-emerges at paragraph 19.31. NICTS staff have a vital role to play in helping court users to navigate the system, irrespective of whether they have legal representation or not. However, we would query the sort of assistance that personal litigants would expect to be provided with at such a centre. The Bar is concerned that these individuals might expect to receive legal advice from the court staff which would be completely inappropriate. In addition, the costs and staffing requirements associated with the establishment of this centre would require further exploration given that the report requires "at least one person".

230. Whilst the information provided at the centre would be a matter for the NICTS, the Bar is concerned at some of the information listed at paragraph 19.35. This includes the use of McKenzie friends. The Bar pointed out in our response to Access to Justice 2 that there appears to be a misapprehension that the Northern Irish approach to McKenzie Friends differs in principle from that in England and Wales. Consequently, this has led to the conclusion that there should be a 'more flexible approach to discretion to authorise a McKenzie Friend' and the recommendation that 'the Court's powers should be liberalised'.

231. Worrying trends are already emerging in England and Wales in relation to McKenzie friends. A recent report from the House of Commons Justice Committee entitled *'Impact of changes to civil legal aid under Part 1 of the Legal*

91 CHICHESTER STREET
BELFAST, BT1 3JQ
NORTHERN IRELAND

Email
judithmcgimpsey@barofni.org

victoria.taylor@barofni.org

Direct Line
+44(0) 28 9056 2132

Website:
www.barofni.com

Aid, Sentencing and Punishment of Offenders Act 2012' stated: *"We are concerned that encouraging the use of McKenzie friends may in some circumstances amount to a counsel of despair: individuals who cannot afford properly regulated legal advice and feel unable to adequately put their own case could find themselves disadvantaged if relying inappropriately on people without legal qualifications".*[13]

232. The Bar welcomes the recognition in the Preliminary Civil Justice Report that there should be a prohibition on remuneration of McKenzie Friends, regardless of the extent of the role being played. The judiciary in England has already taken steps towards this by launching a consultation in February 2016.[14] This should also be stated in the Family Justice Report given that there are obvious risks to the proper administration of justice in any system which permits fee-charging by unqualified, unregulated and uninsured individuals carrying out important activities in the family courts.

233. Furthermore, the report also highlights that the hub could complement the use of social media such as YouTube in relation to the matters listed at paragraph 19.35. However, as far as the Bar is aware the NICTS has no social media presence at all as yet. This would therefore require time and investment to ensure a strategic approach to communications, particularly when vulnerable families are involved.

Both the Bar and the Law Society to draw up a joint protocol governing the approach to be adopted to personal litigants, ensuring best practice for working with lay people is consistently provided. [FJ154]

234. The Bar will engage in this work.

Implementation in Northern Ireland of the equivalent to s.194 of The Legal Services Act 2007, which allows pro bono cost orders to be made where a client represented pro bono wins his or her case. [FJ155]

235. The Bar welcomes this recommendation. Our Pro Bono Unit has been established to provide free legal advice and representation in deserving cases for those who

[13] House of Commons Justice Committee, *'Impact of changes to civil legal aid under Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012'* (published 04 March 2015) at http://www.publications.parliament.uk/pa/cm201415/cmselect/cmjust/311/311.pdf (last accessed 21 October 2016)

[14] Lord Chief Justice of England and Wales, *'Reforming the courts' approach to McKenzie Friends: A Consultation'* (February 2016) at https://www.judiciary.gov.uk/wp-content/uploads/2016/02/mf-consultation-paper-feb2016-1.pdf (last accessed 21 October 2016)

91 CHICHESTER STREET
BELFAST, BT1 3JQ
NORTHERN IRELAND

Email
judithmcgimpsey@barofni.org

victoria.taylor@barofni.org

Direct Line
+44(0) 28 9056 2132

Website:
www.barofni.com

cannot afford the legal help which they need, and who cannot obtain assistance from any other source. We welcome the report's proposal to allow for pro bono costs orders to be made in Northern Ireland and this is something which we would be keen to engage with the Department on taking forward.

Rigorous data recording practices to be established across each tier of the family court system and in each geographical division. This should enable proper and periodic analysis of self-represented litigants, identifying whether there are any variations between courts or divisions. The data obtained would then inform whether a regional approach is appropriate or whether there are certain divisions or areas of practice that encounter most problems. [FJ156]

236. The Bar has no difficulty with the recommendation for data recording procedures to be established across the family courts system to allow for analysis of the numbers and experiences of personal litigants. This would ultimately be a matter for the NICTS to take forward. However, we would suggest that more rigorous data and evidence is absolutely imperative in determining the support needs of personal litigants. We consider that the development of this evidence base is vital before any steps are taken towards addressing the other recommendations around personal litigants in this chapter.

Provision of feedback from personal litigants in a formal questionnaire issued to each one at all tiers to measure their experience together with any suggested improvements. [FJ157]

237. Whilst this would be a matter for the NICTS, the Bar has concerns around the practicalities associated with the issue of a formal questionnaire to personal litigants. This approach would present clear limitations given that the satisfaction of a personal litigant is likely to be directly linked to the outcome of their case. We would require additional information on the detail of any questionnaire before being able to comment further. We would also query what feedback or suggested improvements from personal litigants would be used for. As outlined in response to recommendation 156, it would be more useful to establish data recording practices which allow for an analysis of the reasons why an individual has become a personal litigant. For a balanced approach, we believe that those parties who are represented in cases with litigants in person should also be able to fill in a questionnaire outlining their experience of being on the other side of a litigant in person. We would like to know who would be responsible for analysing feedback and whether it will be shared with the legal professions and the Judiciary.

91 CHICHESTER STREET
BELFAST, BT1 3JQ
NORTHERN IRELAND

Email
judithmcgimpsey@barofni.org

victoria.taylor@barofni.org

Direct Line
+44(0) 28 9056 2132

Website:
www.barofni.com

Court staff, lawyers and judges to receive training for dealing with problems with personal litigants. NICTS should consider training and delegating one staff member in each family court office to deal with such issues. [FJ158]

238. The Bar would be content to discuss any issue identified as a training need that can be delivered within the Family Bar Association's current training programme. However, we would query the considerable financial outlay associated with this recommendation and whether any money allocated to this might be better spent elsewhere. We are concerned that this approach appears to focus on treating the problem of personal litigants rather than properly than preventing it or resolving it.

The results of the current research being undertaken in Northern Ireland on personal litigants to be specifically considered by the newly created Family Justice Board and further recommendations made. [FJ159]

239. The Bar acknowledges that the Review is proposing a Family Justice Board. The Family Division Liaison Committee (FDLC) would also be ideally placed to consider the research conducted by the Human Rights Commission and Ulster University Law School in due course. However, we do have some concerns around the research as outlined in paragraph 19.26 of the report with reference to the running of a legal clinic providing signposting and process advice on how the courts work. FDLC or the proposed Family Justice Board would need to carefully scrutinise the running cost of any clinic and ascertain where funding would be obtained for it. Whilst we understand that this project will not include representation or provide legal advice on the substantive issues in the case for these individuals within the courts, there are concerns within the Bar that over time this will become an alternative route for personal litigants to obtain legal advice which neither addresses difficulties around access to legal aid nor benefits the legal professions.

Chapter 20: Family Justice Board

A Family Justice Board to be set up with an independent chair recruited after a properly advertised recruitment exercise. The chair would be expected to be a person of outstanding and proven distinction and would be paid an appropriate daily rate with an expectation that they would work for 20-30 days per year. The chair should be genuinely independent of all stakeholders. [FJ160]

240. The Bar would wish to see the evidence base that suggests that COAC is not working and further, that a Board is needed rather than improving COAC in areas where there is evidence that there is a problem or deficit which could include

91 CHICHESTER STREET
BELFAST, BT1 3JQ
NORTHERN IRELAND

Email
judithmcgimpsey@barofni.org

victoria.taylor@barofni.org

Direct Line
+44(0) 28 9056 2132

Website:
www.barofni.com

amending its terms of reference and membership if required. We note the comment at paragraph 20.16 that the suggested model is closer to that of the Republic of Ireland. We would welcome sight of any research or evidence base which demonstrates the effectiveness of the Family Law Development Committee in the RoI before any work is taken forward. The Bar believes that there could be changes made to improving COAC which is a multi-disciplinary body of legal professionals and other stakeholders as this will be vital in identifying areas for reform and ensuring that significant improvements are driven forward across the family justice system. We do not believe that it is necessary to expend money on a highly qualified individual to be appointed as Chair as we already have the invaluable services of the independent Family Judge who has an excellent working knowledge of Family Justice in Northern Ireland.

The terms of reference of the new FJB possibly to be along these lines:

"a. The Board's overall aim is to drive significant improvements in the performance of the family justice system, where performance is defined in terms of how effective (and efficient) the system is in supporting the delivery of the best possible outcomes for children who come into contact with it.

b. The Board will collectively work together to achieve its objectives. This principle of cross-agency working will be crucial in ensuring that the Board achieves its overall aim of driving significant improvements in performance.

c. In delivering against this aim, the Board will have a particular focus on:

- reducing delay in public law cases;
- resolving private law cases out of court where appropriate;
- building greater cross-agency coherence;
- tackling variations in local performance;
- carrying out research where appropriate;
- supervising the provision of training;
- -suggesting reform - for example, the implementation of suggestions for reform from bodies such as this Review Group.

d. The detailed objectives for the Board which will underpin its work might be:

- to develop and monitor the implementation of a system-wide plan which sets out clear actions to be taken within, and particularly across, delivery agencies in order to achieve significant improvements in system performance;
- to review and analyse whole system performance, based on evidence, and to report on this including through an annual report;
- to concentrate on outcome-based approaches, challenge poor

91 CHICHESTER STREET
BELFAST, BT1 3JQ
NORTHERN IRELAND

Email
judithmcgimpsey@barofni.org

victoria.taylor@barofni.org

Direct Line
+44(0) 28 9056 2132

Website:
www.barofni.com

performance and make recommendations on performance improvements to Ministers, agency heads, local authorities and others;

- to develop, support and monitor local manifestations of the Board (Local Family Justice Boards) which will oversee the operation of family justice in their areas;
- to identify, disseminate and monitor the implementation of local best practice and to help Government disseminate the latest research throughout the system;
- to identify processes by which research can be transmitted around the family justice system, enabling it to be reviewed and improved;
- to oversee the delivery of particular Family Justice Review recommendations, for example, on workforce, (excluding the judiciary), standards and the "voice of the child"; and in the longer term, to consider the case for more fundamental structural change to the family justice system and provide advice accordingly to the Government.

e. The Board will at all times respect and act in a manner which protects judicial independence, both in relation to the judiciary generally and to individual judicial decisions." [FJ161]

241. The Family Bar Association would welcome the opportunity to contribute more fully to any consultation on the drafting of these terms in the event that the proposed Board is taken forward. The Bar believes first there needs to be further consultation regarding the use of COAC and whether changes can be made to COAC.

The core membership of the Family Justice Board to be approximately 8-10 persons with the right to set up sub-groups and second relevant persons for defined purposes. Since the objective is to identify strategic goals and ensure accountability, the following membership might be chosen from:

- at least 2 family court judges
- Chief Executive, Northern Ireland Guardian Ad Litem Agency
- a senior representative of the health and social care trusts
- Chair of the Family Bar Association
- Law Society member
- Director of NICTS
- Chief Executive of the Legal Services Commission
- an academic member to advise the Board about current research on issues affecting children and to have particular responsibility for multi-disciplinary training.
- One from:
- Director, Children's Services, Department of Health

91 CHICHESTER STREET
BELFAST, BT1 3JQ
NORTHERN IRELAND

Email
judithmcgimpsey@barofni.org

victoria.taylor@barofni.org

Direct Line
+44(0) 28 9056 2132

Website:
www.barofni.com

- Director, Family Policy, Department of Justice
- Director of Family Policy, Department of Finance

On a rotational basis, the Board should co-opt a member from the voluntary sector to ensure that a range of perspectives informs decision-making. [FJ162]

242. The Bar is content to accept this recommendation as we believe it reflects a strong core membership for the proposed Family Justice Board. Consideration could be given to the assessing the current membership of COAC in line with these recommendations. However, we would query the rationale for a rotational member from the voluntary sector. Further detail should be provided on the meaning of this given that a frequent change in membership could lead to a lack of consistency from this important sector. Membership priority should be given to those voluntary organisations responsible for delivering services within the family justice system. It might also be worth considering whether the Northern Ireland Commissioner for Children and Young People should be involved in the Board. We would also point out that the Legal Services Agency is incorrectly referenced as the Legal Services Commission.

The Family Justice Board to have the power to set up sub-committees, co-opting persons from outside the Board. [FJ163]

243. The Bar has no difficulty with this power being given to COAC.

The Family Justice Board to provide annual reports on its work. [FJ164]

244. The Bar has no difficulty with this recommendation being applied to COAC.

The minutes of the Family Justice Board meetings to be distributed widely and publicly online. [FJ165]

245. The Bar has no difficulty with this recommendation being applied to COAC.

The Family Justice Board to have a secretariat and be given a modest budget to finance, for example, the drafting of practice guidelines, measured research, training manuals, expenses for attendance at seminars or conferences to which the chair or a nominated person might usefully attend or address, etc. [FJ166]

246. The Bar has no issue with this suggestion in principle; however the funding is a significant issue. We would welcome the opportunity to see a full costed budget

91 CHICHESTER STREET
BELFAST, BT1 3JQ
NORTHERN IRELAND

Email
judithmcgimpsey@barofni.org

victoria.taylor@barofni.org

Direct Line
+44(0) 28 9056 2132

Website:
www.barofni.com

proposal if the establishment of the Family Justice Board is taken forward. If funds are available, we query why this could not be made available to COAC.

Pending the setting up of this Family Justice Board, a number of steps to be taken to improve the Children Order Advisory Committee (COAC). These should include:

(a) The agenda items for the following meetings should be finalised at each meeting. These, along with any associated option/background papers, should be circulated to the representative groups (including the Regional Court Users Groups, the trusts and Guardian Ad Litems) in advance of their own meetings to allow them to debate and report back.

(b) The current practice of inviting speakers to COAC should cease. Interested parties should be asked to contribute a short paper which again should be circulated to the representative groups for comments and queries.

(c) There should be a one page briefing paper issued within a week of each meeting for publication on the COAC section of the Northern Ireland Courts & Tribunals Service website. This would allow for transparency and provide an easily accessible record of previous business for new members.

(d) The format of the annual review should be changed. A shorter review based around the briefing papers, published in a timely way, is more useful than a longer document that is out of date before it is written.

(e) A Regional Court Business Group should be specifically tasked to identify changes to the Best Practice Guide and to forward draft changes to COAC.

(f) The agenda should remain focused on the remit. Irrelevant additional items should not be added merely to "beef up" a short agenda. [FJ167]

247. The Bar has no issue with this recommendation and believes that some of these recommendations are already in practice.

Our current Family Court Business Committees (or potentially a single Committee for the region akin to the Family Justice Council in England) to undertake the role of adviser to COAC (or its replacement body, the Family Justice Board) through its periodic reports to assist in the making of strategic decisions about the family justice system in Northern Ireland. [FJ168]

91 CHICHESTER STREET
BELFAST, BT1 3JQ
NORTHERN IRELAND

Email
judithmcgimpsey@barofni.org

victoria.taylor@barofni.org

Direct Line
+44(0) 28 9056 2132

Website:
www.barofni.com

248. The Bar has no issue with this recommendation as it currently is in operation with regards to Court Users committees for the different areas and COAC.

91 CHICHESTER STREET
BELFAST, BT1 3JQ
NORTHERN IRELAND

Email
judithmcgimpsey@barofni.org

victoria.taylor@barofni.org

Direct Line
+44(0) 28 9056 2132

Website:
www.barofni.com