

SHADOW CIVIL JUSTICE COUNCIL

Minutes of the Sixteenth meeting of the shadow Civil Justice Council held on 20th September 2023 at 4.15 pm via WebEx video conferencing and in person.

Attendees: Mr Justice McAlinden (Chair)
Master Harvey
His Honour Judge Gilpin
District Judge Duncan
Debbie Maclam (LCJO)
Paul Andrews (Legal Services Agency)
Andrew Dawson (DoJ)
Cormac Fitzpatrick (Law Society)
Liam McCollum (Bar)
Karen Ward (NICTS)

Secretariat: Julie McMurray (LCJO)

Catherine Di Maio (LCJO) (notetaker)

Welcome and Apologies

1. The Chair welcomed everyone to the meeting and thanked members for their attendance. Apologies were noted from Michael Foster. **Minutes of the last meeting**
2. The minutes of the 15th meeting of the Shadow Civil Justice Council on 8th March 2023 were agreed and will be published in due course.

Business Continuity and Modernisation

Lady Chief Justice's Office (LCJO) Operational Update

3. Mrs Maclam provided members with an LCJO operational update and explained that revised guidance was issued by the Lady Chief Justice's Office on the 15th May 2023. , The guidance set out that from 15th May 2023, all legal representatives, participants in proceedings, members of the media and public should attend court in person unless a judge directs they can attend remotely. The Court of Appeal, Divisions of the High Court and presiding judges at other tiers may, where deemed necessary, issue specific practice guidance as to

when remote attendance may be permitted. The practice guidance for the Masters' Courts, including for undefended divorces, remains unchanged.

4. Mrs Maclam gave an overview of the [Judicial Statistics](#) for April to June 2023 which were published in August and noted that figures for the High Court show a 68% increase in Chancery cases which will be kept under review, a 24% increase in the number of writs and summonses disposed of and an 18% increase in the number of Judicial Review applications received. Figures for the County Court showed a significant rise in the number of small claims disposed of - 42% and an increase of 2% in the number of small claims received. There was also a 14% increase in the number of civil bills received with a notice of intention to defend and a 1% decrease in the number of civil bills disposed of. The Chair noted there was also a decrease of 16% in the time taken to dispose of civil bills.

Judicial Modernisation Update

Vision 2030: Judicial Advisory Group

5. Mrs Maclam provided members with an update on the progress of the Judicial Advisory Group chaired by Mr Justice Huddleston. The Advisory Group through its sub-groups has continued to discuss judicial requirements and expectations for future ways of working to be introduced with the re-design of services supported by the new Themis digital IT system. Discussions to date have looked primarily at high level civil and family business from appropriate promotion/signposting of alternative resolution options or initiatives using an online portal; online case initiation and progression; case management workflows and judicial directions; potential for e-service and digital signatures, and management information useful to the judiciary. Mrs Maclam explained that the agreed judicial expectations and assumptions were communicated at a series of competitive dialogue workshops over the summer to the three short-listed suppliers, and will help inform how the new processes are developed once the contract is awarded in early 2024.

E-Bundles

6. Mrs Maclam updated members on the progress of the e-bundles pilot and explained that LCJO had issued a survey to judiciary on 1st March on the use of e-bundles since the issue of PD2/22. The experiences of judges helped inform the Lady Chief Justice of progress and concerns, and it was agreed that Judges and Masters would encourage greater use of e-bundles in specific areas to include authority bundles in the Court of Appeal, Undefended Divorces, and Extradition. All High Court Judges were trained in using e-bundles in September 2022, and further sessions were arranged in April and May for the Masters and County Court Judges dealing with extradition. LCJO and court

staff are also monitoring use of e-bundles and collating information about how many are received, for which business areas, etc which will be reported at the end of each term to the Lady Chief Justice. During the first monitoring period it was noted that 43 e-bundles were received during the period March - Aug 2023. 44% (19) of these were not compliant in format with Practice Direction 02/2022 and 49% were confirmed as used by judges. Mrs Maclam also noted that potential savings in hard copy pages was just under 26000; 33% of which were for the Court of Appeal, 51% for Judicial Reviews and 12% for the Office of Care and Protection. HHJ Gilpin added that the e-bundles prepared in extradition cases are always of a very high standard, Master Harvey advised that in the Kings Bench compliance with Practice Direction 02/2022 is sporadic.

Judicial Portal and App

7. Mrs Maclam provided members with an update on the contract for the Judicial Portal and App and advised that it was awarded to Cranmore Consulting. Vision 2030 and LCJO staff have engaged with Cranmore to scope out requirements and the Development & Design phase of the project completed on 7th September. The project has now moved into the User Acceptance Testing (UAT) phase and both staff and judiciary will be involved in testing the new portal. Planned delivery timescales remain on track for launch of the portal on 31st October and the app on 31st December.

Digital Programme

8. Mrs Ward updated members on work on Themis and advised that work has progressed since the last meeting in March. 3 shortlisted suppliers have been invited to commence competitive dialogue with phase 1 Dialogue now completed which involved 7 sessions with each of the suppliers. Mrs Ward noted there has been good input with the LCJO during the process. The system requirements have been updated to reflect Phase 1 Competitive Dialogue outputs. It is envisaged that the evaluation of 3 bidders' Detailed Solutions will be completed between the end of September and the end of November 2023. It is anticipated that feedback will be provided to shortlisted suppliers on submitted bids by December 2023. Phase 2 competitive dialogue will be commenced in January 2024 and the development of a Full Business Case will begin in February 2024 ahead of contract award in Summer 2024.
9. Mrs Ward advised members that the discovery exercise on scope for delivery of improvements to the Enduring Power of Attorney Process has been paused due to resource constraints. Mrs Ward added that work is also planned for later this year to begin scoping work to identify requirements for an enhanced audio & video solution to introduce additional and improved functionality. It

is planned that work to define requirements and scope solution options will be completed by March 2024.

Estates Programme

10. Mrs Ward provided members with an update on the work which has continued on the RCJ Services Infrastructure Project. The Royal Institute of British Architects (RIBA) Stage 1 is complete, the draft Outline Business Case 1 (OBC1) has been prepared and the internal review is underway with Gateway 1 scheduled and the assessment to take place in October 2023. It is anticipated that the approval process will conclude later this year. Mrs Ward advised that an Estates Strategy has been developed, and an Estate Strategy Advisory Group established which included representation from the LCJO. The draft Strategy is due to go to the Board on Monday 25th September 2023 for approval. NICTS will engage with the LCJO to ensure it is shared with the judiciary. Mrs Ward advised that consideration is being given to the Old Townhall being utilised for staff to decant to during the RCJ refurbishment, but further appraisal of options will be required. It has been established that it will not be possible to conduct court hearings within the RCJ whilst work is ongoing due to noise disruption and other health and safety concerns.
11. The Northwest Accommodation Project is progressing well. Engagement has taken place with the LCJ and the Recorder and the Strategic Outline Case (SOC) Addendum has been approved by DoJ and DoF Supply. Engagement has taken place with Historic Environment Division (HED) confirming that an extension(s) to Bishop St Courthouse is feasible and the refurbishment and extension of the Courthouse is the Project's preferred option. A workshop has been held with the Ministerial Advisory Group (MAG) and the proposed approach to the development of Bishop St Courthouse has been endorsed. The option for upgrade and extension of Bishop Street will be subject to further appraisal following the completion of design work and the development of an Outline Business Case by an Integrated Consultancy Team. Engagement has commenced with Construction and Procurement Delivery (CPD) to agree the procurement strategy to appoint the Integrated Consultancy Team (ICT). The Chair queried if the plan for the Old Townhall building was just as a decant for business from the RCJ whilst works were taking place. Mrs Ward confirmed that initially the Old Townhall would be used for that purpose and a separate business case would be required for longer term use.
12. The Chair enquired whether there were any plans to facilitate closed hearings within the RCJ. Mrs Ward advised that this was under active consideration and NICTS will continue to liaise with the LCJO on the matter, however there were a number of significant security matters that could impact feasibility.

Master Harvey noted that availability of courtrooms in the RCJ remained an issue and HHJ Gilpin enquired whether there were plans to create any additional courtrooms in Bishop Street. Mrs Ward confirmed the plan was to apply for planning permission for an extension to Bishop Street with the aim of getting one or two extra courtrooms.

Litigants in Person

LIP Reference Group

13. Mr Dawson updated members on the work of the Reference Group. The LiP Reference Group continues to function well and new LiP members with a range of experience of the justice system have recently joined the Group bringing additional insight. To date, the Reference Group has focused on improving the experience of LiPs in family proceedings and contributing to the Department's modernisation and reform initiatives, but the Group is due to consider its forthcoming work programme in coming weeks and a greater focus on supporting LiPs in civil proceedings may emerge. There remains a high level of interest among LiP members on the role of McKenzie Friends and consistency of approach to them. Mr Dawson added that following a successful webinar in March 2023 on enabling the effective participation of unrepresented and vulnerable litigants, the Reference Group is considering hosting a further event late in 2023 or early 2024. The Chair updated members that the LiP RG is now chaired by Les Allamby and the last meeting took place on the 12th September 2023. The Chair asked members if they would be in agreement that Mr Allamby be invited to attend the next meeting of the sCJC on the 17th January 2024. Members agreed and Mr McCollum suggested topics for discussion should be requested from Mr Allamby in advance of the meeting. The Chair also asked Mr McCollum and Mr Fitzpatrick to make enquiries regarding the Bar and Law Society representatives of the LiP RG as they had not attended the last number of meetings.
14. Mr Dawson advised members that the Department has now reached agreement with Ulster University and is funding the maintenance of the web tools developed by the University for LiPs involved in private family law disputes. Although subject to ongoing monitoring to establish use and benefits, the tools have been very well received by users to date and it is hoped they can provide a platform for the development of further supports for LiPs in the future as resources and funding allow.

Action point: Secretariat to invite Mr Allamby to the sCJC meeting on the 17th January 2024 and ask for a list of topics he would like to discuss.

Action Point: Mr Fitzpatrick and Mr McCollum to contact representatives of the Bar and Law Society who are members of the LiP RG to enquire about their availability to attend meetings.

The overriding objective: an efficient and timely process

Out of court settlement of cases involving unrepresented minors

15. Mr Dawson advised that there was no further update since the last meeting of the sCJC in March. Mr Dawson advised that the hope remains that, subject to the views and agreement of an incoming Minister of Justice and Executive approval, provision relating to minor settlements will be included in a Modernisation of Justice Bill in the first 6 to 8 months of the Assembly return. This would provide for all cases involving a minor to be required to come to court for approval of the proposed settlement. In the interim Departmental officials are liaising with OLC on drafting the necessary clause(s) and have been engaging with claimant and defendant solicitor's representatives, and insurance industry representatives on the policy. A meeting with representatives was held on 5th September to assist with the development of the clause(s). The Chair noted that this would assist in speeding up the process and was pleased to hear that engagement had taken place.

Pre-Action Protocols (PAP's)

16. Master Harvey provided members with an update on the Pre-Action Protocols which had been reviewed by the Sub-Committee on Pre-Action Protocols and advised that the following pre-action protocols for use in the County Court were published on the 6th February 2023 following consultation; Commercial Actions, Ejectment Proceedings and Personal Injury and Damage only Road Traffic Accident Claims. The Clinical Negligence Practice Direction and Protocol (County Court) was published on the 1st June 2023. Master Harvey advised that a review of the Clinical Negligence Protocol and Practice Direction for the High Court is due to take place at the end of the year and that a record of any issues is being compiled. The results of the review will be available at the next meeting of the sCJC in January. HHJ Gilpin advised that there had been no issues with the Clinical Negligence Protocol in the County Court and Mr Fitzpatrick confirmed that the Contentious Business Committee had not been made aware of any issues either.

Action Point: Master Harvey to carry out a review of the Clinical Negligence Protocol and Practice Direction for the High Court and report to the sCJC on 17th January 2024.

Civil Justice Council Report on Pre-Action Protocols

17. The Chair updated members that the Civil Justice Council published their final report on Pre-Action Protocols on the 21st August 2023. The report has been shared with members in advance of today's meeting. Master Harvey confirmed that the sub-committee on Pre-Action Protocols is due to meet on the 10th January 2024 to discuss the report and consider the recommendations and the possibility of drafting a General Pre-Action Protocol for NI and a Practice Direction for vulnerable witnesses.

Review of Personal Injury Pre-Action Protocol and Practice Direction

18. Master Harvey advised members that a working group has been established to review the current Personal Injury and Pre-Action Protocol for the High Court. Terms of Reference have been drafted and the group is due to hold its first meeting on the 26th September 2023. Updates will be available at the next meeting. The Chair expressed his gratitude to all those who had volunteered to be a member of the working group.

Review of Practice Directions

19. Mrs McMurray updated members on the work that had taken place since the last meeting. Phase two of the review of Practice Directions completed in June 2023 and a further consultation issued to stakeholders on the 28th June 2023 which closed on 9th August 2023. Responses were considered and [Practice Direction 02/2023](#) issued on the 11th of August 2023 to revoke those Practice Directions deemed obsolete. Mrs McMurray noted that comments had been received during the review in relation to a Practice Direction which applies to Chancery business and engagement with the Chancery Judge to review the practice direction had begun. Mrs McMurray advised that this now concludes the review of Practice directions and added that work is also ongoing to review the practice directions section of the Judiciary NI website to make it more user friendly with a better search function. Mr McCollum advised that this would be very worthwhile.

Alternative Dispute Resolution and Mediation

20. Mr Dawson advised that following the action point from the previous meeting on the 8th March 2023 the membership of the Commercial Consortium had been circulated amongst members. Mr Dawson added that the commercial consortium leading the online dispute resolution pilot (Consumer Code for Online Dispute Resolution (CCODR)) continues to

explore options to fund a pilot involving cases which would normally fall to the small claims court. In the absence of additional funding the pilot will not be able to proceed in the immediate future.

21. Mr Dawson advised the General Authority to allow mediation in non-family cases without the prior authority of the Legal Services Agency is continuing to operate, as is the provision for prior authority if the LSA agrees to a higher rate or additional hours. An evaluation of the General Authority is in train which will inform next steps but data to date suggests uptake has been fairly limited thus far. Mr McCollum raised concerns with the cost of mediation and Mr Andrews agreed that the costs were high at times but that the entire package should be considered. The Chair noted that at times mediation was at times best left to the legal profession instructed in the case but that there were instances when it had been effective in Kings Bench. Mr Fitzpatrick added that he had one case which had been listed for a two week hearing and that after a mediator had been engaged it had settled after one day of mediation. Master Harvey enquired what the cost of the mediator was and Mr Andrews advised it could be between 5k-10k.

County Court and Small Claims Court

22. Mr Dawson advised that there is no further update since the previous one provided for the meeting on the 8th March 2023. At the last meeting members had queried whether primary legislation was required to increase the county court jurisdiction. Mr Dawson advised that advice had been received that it was not and a note would be issued to members. HHJ Gilpin said the view of the Gillen report was that work should move from the High Court to the County Court and that this had not happened as there had been no increase to the County Court jurisdiction. Master Harvey added that he had noted an increase in the number of removal applications. Mr McCollum enquired if the County Court could cope with an increase in business, HHJ Gilpin said that as new deputies had been appointed it would be able to cope with additional business.
23. DJ Duncan advised that he had provided statistics on the number of small claims considered unsuitable for the small claims court as agreed at the previous meeting. DJ Duncan confirmed 7 cases had to be transferred from the small claims court to the county court under Order 26 rule 32(f) of the County Court Rules. That figure is for all of Northern Ireland. DJ Duncan said that District Judges have advised that they regularly encounter cases in the small claims lists that would justify a transfer under the above provision but that when the cost implications of such a transfer is explained the vast majority of such cases then settle. In one court there are one if not two such cases in every one of the small claims lists. The Chair enquired if the consensus amongst

District Judges was that the increase had not worked as it should. DJ Duncan agreed and explained that parties might have to engage solicitors without being able to re-coup costs. HHJ Gilpin agreed with DJ Duncan and asked that the issues raised regarding the County Court and Small Claims jurisdiction be recorded in the minutes. Mrs Maclam advised that the DoJ are taking forward a review of the increase to the small claims jurisdiction. The Chair enquired how a party could recover legal costs if they don't transfer the case to the County Court. HHJ Gilpin advised if the increase to the county court was implemented this would resolve. Mr Dawson advised that he would be happy to articulate the concerns raised at the meeting to the next Justice Minister and would take forward any lines members wished to pass on.

24. HHJ Gilpin also asked to raise the issue of the length of time it takes to receive a psychiatric report and hearing loss expert reports. The Chair said that the LCJ was aware of the issue and that it was causing delays of between 6-9 months in some cases. He confirmed that the LCJ had written to the relevant bodies on the issue. Master Harvey advised that the delay was also having an impact on clinical negligence cases.

McKenzie Friends

25. Mrs McMurray advised members that a draft code of conduct and revised Practice Note 03/2012 McKenzie Friends has been prepared and has been shared with members in advance of today's meeting seeking agreement for the drafts to issue for public consultation. The Chair wanted his thanks recorded to Lord Justice McCloskey for his work on assisting with the preparation of the drafts. Members agreed that the drafts should issue for public consultation.

Action Point: Secretariat to arrange for the draft code of conduct and revised Practice Note 03/2012 to issue for public consultation.

Experts

26. Mrs McMurray referred to the draft Guidance on the instruction of Experts in the High Court which was shared with members in advance of today's meeting to seek approval for the guidance to issue for consultation. Mr Andrews suggested an amendment to page 4 of the guidance, Mrs McMurray agreed to liaise with Mr Andrews regarding the amendment before issuing for consultation. The Chair advised he thought the guidance was comprehensive and confirmed that members were content for the guidance to issue for targeted consultation.

Action Point: Secretariat to liaise with Mr Andrews regarding the amendment to the draft guidance.

Action Point: Secretariat to arrange for final draft of guidance to issue for targeted consultation.

Disability

27. Mr Fitzpatrick updated members on the action point agreed at the previous meeting that Mr Fitzpatrick would bring forward the issues of potential pro-bono work and communication issues identified to the Contentious Business Committee. Mr Fitzpatrick advised that Nuala Toman of Disability Action met with the Chair and Secretary of the Law Society of NI Contentious Business Committee on the 13th June 2023 and that it was a very positive meeting. The meeting discussed the challenges Disability Action face and how they might engage with the Society. Mr Fitzpatrick advised the following was agreed at the meeting;

The Society is running a 2-year training program for solicitors working with vulnerable witnesses. This starts in the autumn 2023. Disability Action were most interested and may be able to contribute.

The Committee suggested Disability Action presenting a CPD lunchtime seminar at the Law Society as part of the CPD program and Disability Action are to return with proposals.

Disability Action were offered the opportunity to prepare an article for The Writ magazine.

28. The Chair updated members on the remaining action points on disability from the last meeting in March which Nuala Toman from Disability Action attended and provided an update to members on the issues that those with disabilities encounter when navigating the justice system. It was agreed at the last meeting that Ms Toman would write into the Judicial Studies Board with a proposal regarding providing training to the Judiciary. The Chair reported that Ms Toman has been in contact with JSB who are progressing this. It was also proposed at the last meeting that a representative from the Disability sector should be invited to join the Litigant in Person Reference Group, this has also been taken forward and the Terms of Reference of the Litigant in Person Reference Group have been amended to reflect this. The Chair expressed his thanks to the Law Society for embracing the concerns raised and taking positive steps and noted the significant progress made.

Determining Mental Capacity in civil courts

29. The Chair advised members that the sCJC would maintain a watching brief on the working group set up by the Civil Justice Council on the Procedure for Determining Mental Capacity in the Civil Courts. The Chair noted that if concerns are noted by a Judge that the official solicitor is engaged. HHJ Gilpin advised that he has not encountered any issues to date.

AOB

30. Master Harvey advised that a report on the outstanding clinical negligence recommendations in chapter 22 of the Civil Justice Review Report has been prepared and shared with members in advance of today's meeting. The report sets out a number of recommendations which have been completed as a result of the revised Clinical Negligence Pre-Action Protocol and Practice Direction and the updated Kings Bench guidance issued in 2022. It is proposed that subject to members agreement those recommendations identified as having been met should be formally marked as 'completed.' Members agreed that those recommendations identified should be marked as complete in addition to one amendment at point 2 which should record that in person hearings are now the default position.

Action Point: Secretariat to mark recommendation identified as completed accordingly.

Next Meeting

31. It was agreed the next meeting of the Shadow Civil Justice Council would take place on the **17th January 2024 at 4:15pm.**