

## SHADOW CIVIL JUSTICE COUNCIL

### Minutes of the Eleventh Meeting of the shadow Civil Justice Council held on 9th December 2021 at 4.15 pm via Webex video conferencing.

Attendees: Mr Justice McAlinden (Chair)  
District Judge Duncan  
Master McCorry  
Liam McCollum QC (Bar Council)  
Mark Goodfellow (NICTS)  
Karen Ward (NICTS)  
Laurene McAlpine (DoJ)  
Cormac Fitzpatrick (Law Society)  
Michael Foster (DoF)  
Kim Elliott (LCJO)  
Sheila McGivern (Legally Able Group)

Secretariat: Julie McMurray (LCJO)  
Catherine Di Maio (LCJO)

#### **Apologies**

1. The Chair welcomed everyone to the meeting and thanked members for their attendance. Apologies were noted from HHJ Devlin, Mandy Kilpatrick and Paul Andrews.
2. The Chair welcomed Ms McGivern to the meeting and thanked her for attending on behalf of the Legally Able Group.

#### **Previous minutes - shadow Council meeting on 16<sup>th</sup> September 2021**

3. The minutes of the last meeting were agreed and will be published in due course.

#### **Covid-19: Business Continuity & Recovery**

4. Mr Goodfellow provided an update on behalf of NICTS and advised that business levels have continued to increase and an increase of 0.9% on last year's disposal figures has been recorded. NICTS has discussed the impact the shortage of social workers is having on the family courts with the Department of Health.
5. NICTS are also planning to open Strabane Courthouse on the 10 January 2022. Whilst Magistrates business will mainly be listed in Strabane Courthouse

the re-opening will assist in providing additional opportunities in terms of courtroom utilisation.

6. Mr Goodfellow advised that in relation to Housing Rights work on leaflets had been completed and a space in the RCJ has been allocated. The Chair remarked that he was also pleased to hear that a router had been installed in the allocated space.
7. Mrs McMurray advised that following the Executive's announcement on 23 November that further steps needed to be taken to break the chain of transmission of Covid-19, the Lady Chief Justice's Office had restated the position for courts and placed guidance on the Judiciary NI website on 24 November, its objective being to ensure the administration of justice continues to be delivered in a safe environment. While courts remain open for face to face hearings, physical attendance should only be when required by a judge. Judges will decide whether physical attendance is necessary based on the circumstances of the case and may schedule cases to manage footfall. Social distancing continues to be a requirement and there is also a role for hybrid and remote hearings to help manage footfall. The Chair noted that unlike other jurisdictions no link had been identified between attendance in court and an outbreak which is an indication that the current procedures are working. Mr Goodfellow added that it is worth noting that we are the only jurisdiction not to have had a court closure due to Covid-19.

### **Litigants in person (LiP)**

#### **LiP Reference Group -update**

8. The Chair updated members that the next meeting of the LiP reference Group will be on 15 December 2021. Access to family courts to test the support tools in live courts with users will be discussed at the meeting. The Chair said that NICTS have done everything they can do to facilitate the research and that all possible avenues have been explored. The absence of consent or uptake by litigants is the main obstacle. Litigants cannot be forced to participate and details of parties cannot be shared with a third person without consent. Mrs McAlpine advised that everyone involved had pushed the issue as far as possible and perhaps the University of Ulster could confirm how many hits the website had received. The Chair confirmed that enquiries would be made at the next meeting of the LiP reference Group.

## **The overriding objective: an efficient and timely process**

### **Out of court settlement of cases involving unrepresented minors**

9. Mrs McAlpine advised that the consultation closed on the 24<sup>th</sup> September 2021 and 54 responses were received. The Department hope to publish their response to the consultation in January or February 2022. The Chair advised there is also a pending Judicial Review case in which the applicant seeks to challenge the MIB procedure which provides for minor settlements to be concluded without a court approval process, the case was before the court on the 20<sup>th</sup> September and has been adjourned generally.

### **Pre-Action Protocols (PAPs)**

10. Master McCorry provided an update on the work of the sub-committee. He advised a working group has been set up to commence the drafting of PAPs in the following areas:

#### **Clinical Negligence Pre-Action Protocol**

- a. Master McCorry advised that the Protocol for Clinical Negligence Litigation in the High Court and Practice Direction for Experts issued on 29 September 2021(Practice Direction 2/21). Work is due to commence on the County Court PAP and will incorporate any learning from the High Court Protocol. Nominations have been sought from the Bar and Law Society to assist in the drafting of the PAP for the County Court and this will be added to the agenda of the next meeting of the Sub-Committee.

#### **Defamation Pre-Action Protocol**

- b. Master McCorry advised that the Sub-Committee have finalised a draft of the defamation protocol which is intended for use in the High Court but can be adapted for the County Court, the draft has been shared with members. The Chair advised that correspondence had been received from the Committee for Finance seeking members' views on the Defamation Bill which is currently before the Committee. Mr Foster provided an update on the progress of the Bill. Members discussed the correspondence received and agreed an appropriate response should issue, noting that it is not appropriate for members of the judiciary to comment on policy. The Chair invited views on proceeding with issuing the Defamation Pre-Action Protocol on the basis that any amendments can be made relatively easily after the Defamation Bill has been enacted. Members agreed that the Defamation PAP should be progressed.

### County Court Pre-Action Protocol(s)

- c. Master McCorry updated members on the progress of the working group lead by HHJ Devlin, the group has commenced the drafting of protocols in respect of Personal Injury and Damage Only Road Traffic Accident PAP; a Commercial Actions PAP; a PAP for Ejectment Proceedings and; a PAP to cover defamation, malicious falsehood and other issues. The working group is due to have drafts completed by the end of January 2022 and the sub-committee is due to meet again on the 14 February 2022, an update will be available for members after the meeting.

**Action: Defamation Pre-Action Protocol to issue for consultation.**

### Review of Practice Directions (PDs)

11. Mrs McMurray updated members with progress to date, a further thirty Practice Directions have been identified and are currently being reviewed. The next stage will be to finalise a list of Practice Directions and also consider the revocation of any further Practice Directions deemed obsolete. Guidance for the Judiciary on the drafting and issue of practice directions was issued on 2 December 2021 following a revision of internal procedures to ensure consistent application and issue of practice directions across the court tiers

### Alternative Dispute Resolution and Mediation

12. Mrs McAlpine advised that a pilot is being progressed by a commercial consortium with the support of the Department and discussions are ongoing to agree that costs incurred by the Department will be limited to the evaluation. The consortium is hoping that further costs will be met by a super user of the small claims court such as a bank or credit union in the interests of building evidence so as to reduce their expenditure in the longer term. A further meeting is scheduled to take place in 2022 but at present a start date has not yet been agreed.

### Intra-Court Mediation

13. Mrs McAlpine advised members that following the consultation on intra-court mediation in non-family civil cases earlier this year the Department has been refining proposals and logistical arrangements for a pilot scheme for the General Authority. The Justice Committee considered a post consultation report on 9 September 2021 and, subject to ongoing work, the Department expects to be in a position to launch the pilot in February.

### The County Court and Small Claims Court

#### Monetary Jurisdiction

14. Mrs McAlpine updated members on the consultation to increase the financial jurisdiction of the County Court. The Department has published the summary of responses to the consultation on the 23 November 2021 and has advised that subject to a business case approval there will be an increase to the small claims court jurisdiction to £5k by April 2022. Mrs McAlpine advised that it is also planned that work on increasing the general civil jurisdiction will be taken forward in the next mandate and will also be subject to a business case. As there will be a significant number of issues the Department will be setting up a project group to manage this work.

#### **Digitisation for & in court**

15. Mrs Ward advised members that the NICTS Modernisation Digital Strategy was reviewed and agreed by the Modernisation Portfolio Board in October 2021 and approved by the Strategic Oversight Group at their last meeting on 2 November 2021. This will be shared with the Justice Committee ahead of publication on the Department website before the end of December.
16. Mrs Ward updated members that the upgrade of the new courtroom technology, which includes providing upgraded audio and video technology and Wi-Fi connectivity, continues with 55 courtrooms now complete and the remaining 14 courtrooms to be upgraded by August 2022. Mrs Ward confirmed that Wi-Fi is now available in all courtrooms.
17. Mrs Ward advised that 72 sightlink licences and 20 WebEx licences are in operation, and an additional 30 Video Conferencing Units have been installed in courtrooms and tribunal hearing rooms to facilitate remote and hybrid hearings in all operational courtrooms across the court estate with QB3 expected to be upgraded before 10 January 2022. Work is ongoing with the Department to ensure live link powers, contained in Coronavirus Act legislation, that enable remote hearings to take place, should be in place before the end of February 2022. Mrs Ward added that sightlink has had over 1 million connections since March 2020.
18. Mrs Ward updated members on the Probate Online Portal which continues to receive positive feedback from the public, solicitors and staff and is helping to reduce the backlog of applications. As of 12th November, 740 applications have commenced on the portal (227 citizen and 513 solicitor) and 431 grants have been issued (135 citizen and 296 solicitor). Further functionality to allow the addition and extension of caveats via the portal has completed user acceptance testing and went live in the week commencing 15 November 2021. Project closure which will include any lessons learned reporting is planned for the end of December 2021. The Chair asked how much had been spent on procuring sightlink licences and upgrading technology. Mrs Ward advised that whilst this expenditure would have been incurred in the long term the

budget was re-profiled to cover the costs which at the last review was 3 million.

### *Judicial Digitalisation Steering Group (JDSG)*

19. Mrs Elliott advised that the Judicial Digitalisation Steering Group published its 3<sup>rd</sup> update in October 2021 and the group have worked hard to ensure the aspirations of the Judiciary and Service are aligned.

### *Commercial Hub Practice Direction*

20. Mrs Elliott provided an update on the new Commercial Hub Practice Direction. Four responses to the consultation were received in respect of the Practice Direction which will incorporate and replace Practice Direction No. 1 of 2019. It is expected to come into operation once all the responses have been considered. Some responses queried where the data would be held, NICTS have confirmed that the data will be held within the UK and users should not create their own personal accounts as Box is not intended to be used as an electronic document creation or management system. The practice direction is aimed at embedding practices which have already been under development within the Commercial Court, including the facility for directions to be made administratively based on the papers where agreed and the facility of administrative Early Directions Hearings. The Practice Direction also sets out the requirement for a Case Information Form (COM1) to be collaboratively completed by the parties and submitted at each stage of the case management process.

### *Electronic court bundles*

21. Mrs Elliott provided an update on the progress of the e-bundles pilot. A second phase of the e-bundles pilot using 'Bundledocs' took place in November 2021. A demonstration of the software on 15<sup>th</sup> October 2021 was open to all interested members of the Law Society, Bar and the Judiciary and appeared to be fairly intuitive in the manner by which the separate documents were pulled together to create an e-bundle for hearing. The e-bundle was used in a 2-day Judicial Review hearing before Mr Justice Humphreys on 8<sup>th</sup>-9<sup>th</sup> November. Feedback on the preparation and usefulness of the e-bundle during the hearing was largely positive, and some comments and suggestions were made for future cases. Mrs Elliott advised that a pilot has not yet taken place which has involved witnesses. The Chair added that a matter recently before the court involved a trial bundle containing over 5000 pages and that parties were directed to file everything electronically which enabled the two day hearing to run smoothly.

22. Mrs Elliott advised that the third phase will use the Caselines solution in the new term and practitioners have been asked to identify suitable potential cases. This will help to refine judicial requirements for a more standardised general format in the short term, and for NICTS to consider a suitable technical solution that can be utilised across courts and tribunals in the longer term. Mrs Elliott advised that the JDSG are currently working on a draft for general use of e-bundles which includes that Adobe DC can be used instead of Adobe Pro. The Chair suggested that recent guidance in E&W on the use of e-bundles may be of assistance.

### *Personal Injury Discount Rates*

23. Mrs McAlpine provided an update on the Damages (Return on Investment) Bill. The Bill passed Assembly Consideration Stage on 15 November 2021, Further Consideration Stage took place on the 29 November 2021 and the Final Stage took place on the 7 December 2021. The Bill is expected to receive Royal Assent within 6 weeks and the Department is already in talks with the Government Actuary.

### *Disability*

24. The Chair welcomed Mrs McGivern to the meeting and thanked her for her patience whilst the other agenda items were dealt with. Mrs McGivern provided members with background to the Legally Able Group and progress to date. The Legally Able Group was established in 2016 but as a result of the pandemic the group has not been able to hold many meetings. However work has continued on preparing resources for solicitors who are providing services to clients with a disability. The Legally Able Group hope to hold a CPD event in the New Year and have received positive feedback in the past from similar events. The aim is to prepare solicitors so they can make reasonable adjustments to meet the needs of clients and also to assist those with mental health issues to gain better access to courts. Mrs McGivern advised that the group is also looking at the needs of those with hearing impairments and the shortage of sign language interpreters. The Chair acknowledged the difficulties with securing sign language interpreters. Two interpreters would be required for one case and interpreters were not always happy to provide interpretation between the client and solicitor saying this may lead to a possible conflict.
25. Mrs McGivern added that the Legally Able Group is also looking into the rights of those with hearing impairments and their right to sit on a jury, and what reasonable adjustments are put in place. The Chair enquired whether further collaboration could take place between the Legally Able Group and NICTS. Mrs Ward advised that she would be very keen to discuss further the issues raised with Mrs McGivern as part of the Stakeholder Advisory Group or on an ad hoc basis. Mr Goodfellow expressed his interest in also participating

in the discussions and it was agreed that a meeting would be arranged between NICTS and the Legally Able Group in the New Year. The Chair said he would like to receive feedback from Mrs Ward and Mr Goodfellow on their engagement with the Legally Able Group.

**Action: NICTS to arrange a meeting with the Legally Able Group in the New Year.**

**Any Other Business**

**Credit Hire Protocol**

26. Master McCorry advised that nominations have been received from the Bar and Law Society to assist the Sub-Committee on Pre-action Protocols in finalising a draft of a Credit Hire Protocol and the matter will be added to the agenda of the next meeting of the sub-committee on pre-action protocols.

**Defamation Bill**

27. This matter was discussed under the agenda item of Pre-Action Protocols

**Date of next meeting**

- 28 . The date of the next meeting is **Thursday 10<sup>th</sup> March 2022 at 4:15pm.**