

SHADOW CIVIL JUSTICE COUNCIL ADVISORY GROUP

Minutes of the Fifth Meeting of the shadow Civil Justice Council (sCJC) Advisory Group held on 24th March 2022 at 4.00pm via WebEx video conferencing.

Attendees: Mandy Kilpatrick (Chair, PPS to LCJ)
Karen Ward (NICTS)
Bronagh O'Reilly (DoJ)
Glenn McKendry (NFU Mutual/ ABI)
Htaik Win (NIHRC)
Patrick YU (NICRE)
Alastair Ross (ABI)
Alison Cassidy (DAC Beachcroft)
Maurece Hutchinson (JMK Solicitors/NI Coordinator of the Association of Personal Injury Solicitors)
Janet Hunter (Housing Rights)
Sarah Corrigan (Law Centre NI)
Nuala Toman (Disability Action)
Julie McMurray (LCJO)

Secretariat: Catherine Di Maio (LCJO)

1. The Chair welcomed everyone to the meeting and thanked them for attending. She also extended a warm welcome to Nuala Toman and Htaik Win who have recently joined the Advisory Group.

Apologies

2. Apologies were received from Mark Goodfellow, Professor McKeever, Dr Lucy Royal-Dawson, Eamon O'Connor and Ursula O'Hare.

Minutes of the Meeting August 2020

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

Covid-19: Business continuity and recovery

4. The Chair advised members that whilst on the 15 February the Minister of Health announced the revocation of the remaining COVID 19 restrictions and face covering regulations, a number of measures were placed into guidance. The importance that the public should continue to observe sensible measures to lower the spread of Covid-19 in the community was also emphasised by the Minister.

5. The Chair updated members that the Lady Chief Justice's Office issued updated guidance on the Judiciary NI website on 23 February 2022. The guidance sets out that Judges will continue to only require legal representatives and those involved in proceedings to attend in person where it is directed by the Judge. Social distancing continues unless there are mitigations in place and it is anticipated that going forward "hybrid" arrangements will continue to be used.
6. The Chair advised that to ensure the benefits of using technology are built upon the Lady Chief Justice is developing guidance, in consultation with the judiciary and practitioners, to assist in promoting consistency and predictability of approach to the question of remote or in-person attendance.
7. Mrs Hutchinson queried what would happen in the event the extension to the Coronavirus Act legislation ends and there is no Assembly. The Chair advised that all those involved were working towards mitigating such a situation and that it was likely that civil matters would be less affected than criminal matters, as criminal matters rely on the legislation more.
8. Mrs Ward added that it is recognised the legislation may need to be extended and it is hoped a further extension can be secured if required. She also advised that any permanent legislative provision proposed by the Department would be subject to consultation.

Litigants in Person (LIP)

9. Ms O'Reilly updated members on the progress of the Litigant in Person (LiP) Reference Group, work is continuing to identify potential supports for LiPs. The most recent meeting took place on 11 January 2022 and the forum continues to be positive and to be welcomed by LiPs. The next meeting of the LiP Group is in April and next steps are currently being considered with the group possibly turning their attention to civil.
10. Ms O'Reilly advised that work on the tools developed by the University of Ulster with funding from the Nuffield Foundation for LiPs in family proceedings is nearing conclusion. A pathfinder tool, which will supplement the website providing a repository of information launched last year, is in the process of final tests and should be launched in the coming month. The Department is now in discussions with the University of Ulster on options for future funding when the Nuffield funding ends in July 2022.

11. Ms O'Reilly advised that the Department published their response to the [consultation](#) on court approval of minor settlements in January 2022. The report notes that the current mandate of the Northern Ireland Assembly is due to end and a new Assembly will be elected in May. The current Minister believes that legislative intervention would be appropriate in light of the consultation responses, but notes that any decision will fall to a new Minister of Justice and a new Assembly. The report further noted that primary legislation would be required to compel court approval in all cases and also that that primary legislation is not required to uphold the principle that unapproved minor settlements are not enforceable. Ms O'Reilly also advised that the pending Judicial Review case in which the applicant seeks to challenge the MIB Motor Insurers Bureau procedure would also have an impact on the outcome. The Chair advised the case has been listed for a three-day hearing on the 16 May 2022.

Pre-Action Protocols (PAPs)

12. Mrs McMurray updated members on the progress of the sub-committee which has been established under the Chair of Master McCorry to take forward recommendation CJ21; *New pre-action protocols incorporating the best features of England and Wales pre-action protocols and our own pre-action protocols be drawn up*. The group have co-opted 'subject matter experts' from the legal profession to assist with initial drafts for later discussion/wider consultation by the sub-group.
13. Mrs McMurray advised 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 now under way in relation to a PAP for the County Court which is being taken forward by a working group under the direction of HHJ Devlin.
14. Mrs McMurray advised that the Sub-committee 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 was issued for targeted consultation on the 24 January 2022 and closed on the 7 March 2022, consultation responses have been shared with members. Mrs McMurray advised that at the meeting of the sub-committee on Pre-Action Protocols members had discussed holding back the Protocol until there is a better indication of when the Defamation Bill might become operational. The draft Defamation, Media and Communication Claims Pre-Action Protocol was discussed at the last meeting of the sCJC on the 10 March 2022. Members agreed that progression of the PAP should be put on hold pending the progress of the Defamation Bill. Members agreed that the sub-committee on Pre-Action Protocols should meet to consider the

consultation responses and any amendments required as a result of the changes to the Defamation Bill, this meeting is scheduled to take place on the 7 April 2022.

15. Mrs McMurray advised that correspondence had been received from the Committee for Finance seeking members' views on the Defamation Bill and after consultation with members a response was agreed and issued to the Committee. The Committee has now published its Report on the Defamation Bill and this has been shared with members. The report advised that the Committee voted against Clause 11 Trial without Jury. The Committee also voted in favour of a new amendment Clause 10A; *A judge may order plaintiffs and defendants to engage in Alternative Dispute Resolution before commencement of a trial.* Consideration Stage of the Bill took place on 2 March 2022 and some changes were made to the Bill resulting in a lot of substantive provisions being removed; Clause 1 – serious harm, Clause 5 – which would have provided a defence for website operators, Clause 8 – single publication rule, Clause 10 – Actions against persons who are not the author, editor etc. Clause 11 the removal of the presumption of trial by jury has remained. The Bill now stands referred to the Speaker, further Consideration Stage took place on the 14 March, and Final Stage took place on the 22 March 2022.
16. Mrs McMurray updated members on the progress of the working group led by HHJ Devlin has been established to commence 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. Drafts have submitted by the working group and these have been shared with members in advance of today's meeting. At the meeting of the sCJC on the 10 March 2022 members discussed the draft PAP and agreed that they were content that they should be issued for consultation. Mrs Hunter and Mr McKendry asked if comments could be submitted on the drafts at this stage, Mrs McMurray advised that comments would be welcomed at this stage.
17. Mrs McMurray updated members on the progress of the working group, which has been established under the direction of District Judge Duncan to commence work on the drafting of the Credit Hire protocol. The working group met on 21 March 2022 to discuss the issues where agreement could not be reached. A draft Protocol has been circulated among members for comment and will be discussed at the next meeting of the Sub-Committee in May, Mrs Hutchinson agreed the meeting had been very productive.

The County Court and Small Claims Court

18. Ms O'Reilly updated members on the proposal to increase the financial jurisdiction of the small claims court and advised that the Minister formally

consulted the Lady Chief Justice on increasing the small claims jurisdiction. Subject to the consultation and business case approval the Department hopes to make Statutory Rules effecting the increase for some time later this year. Ms O'Reilly advised that the Financial Limits Order had been made that day and it was therefore expected the increase will take effect on the 3rd October 2022.

Civil Hearing Centres

19. Mrs McMurray updated members on the progress of the civil hearing centres, and advised that LCJO have cautioned that it is considered vital that the key structures, for a specialist cadre of judges dealing purely with civil or family business, are clearly identified and put in place prior to any potential further increase being implemented. The Department has acknowledged that the recommendations of the Civil Justice Review for the increase in financial jurisdiction of the County Court are conditional on the creation of not less than three hearings centres, with two judges assigned simultaneously and exclusively to address the issues identified. Mrs McMurray advised that a meeting had taken place between LCJO and NICTS to discuss how this recommendation can be progressed and a further meeting has been arranged.

Digitisation

20. Mrs Ward updated members that the NICTS Digital Strategy was published on the 17 January 2022 with the NICTS ICT Strategy published internally on the same date. The upgrade of courtroom technology has continued with 56 courtrooms now complete and the remaining 13 courtrooms to be upgraded by August 2022. Wi-Fi is now available in all courtrooms.
21. Mrs Ward advised that the Probate Online Portal is continuing to receive positive feedback from the public, solicitors and staff. As of 18th February, 1,116 applications have commenced on the portal (275 citizen and 841 solicitor) and 1055 grants have been issued (256 citizen and 799 solicitor). The portal is enabling applications to be turned around within seven days which is helping to reduce the backlog. The Business Handover and Project closure will include any lessons learned and reporting is planned for March 2022.
22. Mrs Ward advised that the ICOS system is due to be replaced and this will take place over the next 7-8 years. Mrs Ward advised there are 12 services available online which may not be considered user friendly and the intention is to build on the lessons learned from these services.

E-Bundles

23. Mrs McMurray updated members on the first two phases of the e-bundles pilot in the High Court, using the Bar's OBBS service and Bundlesdocs, proved largely positive, and any lessons learned are being taken forward by LCJO and NICTS. The next phase of the pilot is to test Caselines, and a pilot hearing is listed on the 29th March. The profession have been encouraged to continue using e-bundles in appropriate cases beyond the pilot, where practice directions permit e-bundles to be lodged and with the permission of the court.
24. Mrs McMurray advised the LCJO is also considering consultation responses on a draft practice direction which will aim to standardise the submission and format of e-bundles received regardless of source to include the requirements of the judges using these, such as pagination and hyperlinks, ability to annotate and highlight. The directions will deal with how a permitted e-bundle should be structured and lodged with the court, and will be equally applicable to the provision of e-bundles by litigants in person. It will not specify any software packages for preparing the e-bundle which may be as simple as a PDF version of a bundle created on Word or a number of free packages available for occasional users. Mrs McMurray advised that it is hoped that the practice direction will take effect early next term.
25. Mrs McMurray advised that there are therefore no plans to extend the use of e-bundles beyond the High Court at this stage. NICTS are exploring options for the secure storage of e-bundles, which will include a review of retention and disposal schedules for electronic documents. Mrs Cassidy queried how a witness who is giving evidence remotely will be able to access the e-bundle and agreed to liaise with Mrs Ward on the matter.

Online Dispute Resolution

26. Ms O'Reilly updated members on the development for the Online Dispute Resolution pilot work which is ongoing. The Consumer Code for Online Dispute Resolution (CCODR), the commercial consortium leading the project, is progressing work in the hope that it can secure financial support from a super user of the small claims court such as a bank or credit union in the interests of building evidence to reduce expenditure in the longer term. Ms O'Reilly advised the Department is supporting engagement and working to support development of the evaluation and will provide further updates as work progresses.
27. Ms O'Reilly updated members on the consultation, which took place last year on a General Authority for intra-court mediation in non-family civil cases, a pilot was launched on 14 February and the Department will provide updates as work progresses.

Disability

28. Ms Toman provided an update on the research conducted by Disability Action which has shown limited progress and has highlighted the significant barriers to deaf and disabled people accessing justice. To compile the report 531 disabled and deaf people were engaged with and the report notes that deaf and disabled people experience particular challenges in accessing justice including access to interpreters and that deaf and disabled people remain more vulnerable to crime and disability hate crime continues to increase. Ms Toman advised that recommendations to address these challenges include:

- the introduction of legislation to extend legal aid to specific areas of relevance to deaf and disabled people including equality/non-discrimination;
- enable and fund deaf and disabled people's organisations and other civil society groups to pursue legal redress for deaf and disabled people;
- consult on the development of legislation to close gaps in securing justice for deaf and disabled people, e.g. hate crime;
- contract deaf and disabled people to design inclusive training on access to justice and disability for police and prison staff;
- develop training in partnership with deaf and disabled people for legal practitioners on securing access to justice;
- designate a disability access officer for all court levels and tribunal sittings and publish information online in accessible formats about the reasonable accommodations available;
- deaf people should be facilitated to fulfil their role as a member of the jury when called and should be provided with a sign language interpreter or captioning in all cases when requested including for the purpose of jury deliberations;
- the Registered Intermediary Scheme should be inclusive of deaf and disabled people. Deaf and disabled people should be given the opportunity to train as a Registered Intermediary with the aim of supporting deaf people during police interview and in court.

29. Ms Toman advised that the NI Shadow report on implementation is in development alongside the UK List of issues. Access to Justice is highlighted in both reports, which were presented to the Westminster All-Party Group on Disability on the 22nd of March. Mr Yu advised members he would also share NICRE report to the Ministry of Justice. Mr Ross queried whether there was concern that a similar situation would evolve in Northern Ireland to Scotland

where planned incorporation of the UNCRPD into Scottish law and the devolution of disability benefits is continuing. Ms Toman advised that there is a commitment to work collaboratively with other jurisdictions to ensure this does not occur.

30. The Chair acknowledged the many issues that had been raised and in noting that some issues were within the control of the Shadow Groups suggested that the report provided by Ms Toman should be shared with the Shadow Civil Justice Council and Shadow Family Justice Board.

Action: Secretariat to share report provided by Ms Toman with Shadow Family Justice Board and Shadow Civil Justice Council.

Discount rates - Personal Injuries Damages Return Bill

31. Ms O'Reilly updated members that the Damages (Return on Investment) Bill received Royal Assent and was enacted on the 2 February 2022. Sections 1 and 2 and the Schedule to the Act will be commenced on the 10 February 2022. The Government Actuary issued their report on the 15 March 2022 which confirmed the rate would be set at -1.5% which will come into effect on the 22 March 2022.

Any Other Business

32. No other matters were raised

Next Meeting

33. The Chair thanked everyone for attending the meeting remotely, and advised that the next meeting would take place on the **29th September 2022 at 4pm** and members would receive a written report in advance of the meeting.