

## **SHADOW CIVIL JUSTICE COUNCIL**

### **Minutes of the Fourteenth Meeting of the shadow Civil Justice Council held on 8<sup>th</sup> December 2022 at 4.15 pm via WebEx video conferencing.**

Attendees: Mr Justice McAlinden (Chair)  
His Honour Judge Devlin  
Master Harvey  
Alison Houston (LCJO)  
Paul Andrews (Legal Services Agency)  
Liam McCollum KC (Bar Council)  
Karen Ward (NICTS)  
Laurene McAlpine (DoJ)  
Cormac Fitzpatrick (Law Society)  
Michael Foster (DoF)

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

#### **Welcome and Apologies**

1. The Chair welcomed everyone to the meeting and thanked members for their attendance. Apologies were noted from District Judge Duncan and Nuala Toman (Disability Action). The Chair extended a warm welcome to Alison Houston who has replaced Mandy Kilpatrick as the Principal Private Secretary to the Lady Chief Justice. The Chair recorded his thanks to Mrs Kilpatrick for all her work as a member of the Shadow Civil Justice Council and the associated Advisory Group.

#### **Minutes of the last meeting**

2. The minutes of the 13<sup>th</sup> meeting of the Shadow Civil Justice Council on 15<sup>th</sup> September 2022 were agreed and will be published in due course.

#### **Disability**

3. The Chair noted that Ms Toman from Disability Action was due to attend today's meeting to update members on current disability issues but was unable to attend and sent her apologies. The Chair asked that an invitation be extended to Ms Toman to attend the next meeting of the sCJC.

**Action: Secretariat to invite Ms Toman to attend the next meeting of the sCJC**

## **Business Continuity, Recovery & Modernisation**

### **Lady Chief Justice's Office (LCJO) Operational Update**

4. Mrs McMurray provided an update on behalf of the LCJO and advised that the LCJO issued updated guidance on the Judiciary NI website on 22 June 2022. Whilst social distancing has been reduced to 1 metre, pressures on accommodation remain. Mrs Ward advised the Council that the implementation of the NICS guidance in relation to 1 metre social distancing has increased capacity in most courtrooms by approximately 50% but that the ability to facilitate juries is still not possible within Londonderry and Downpatrick Courthouses due to layout constraints .
5. Mrs McMurray explained that current data shows some signs of recovery, provisional figures for April to June 2022 are available on the Department of Justice website. The figures show that during the quarter there were 1,254 sittings, 45 equity, 149 ejectment, 2,104 small claims and one criminal damage case were received; 37 equity, 127 ejectment, 1,623 small claims and 3 criminal damage cases were disposed. The figures show that there was a general increase in the number of cases received and disposed across most business areas and a general decrease in time taken to disposal compared with figures for the same quarter in the previous year. The decrease in the average time from issue to disposal of small claims cases is due to the resumption of cases being dealt with in the courts. In the High Court there were 573 sitting days during the quarter, the highest proportion of which was spent on both Bails and King's Bench business (15%). King's Bench business included 1,047 writs and originating summonses received, 532 were disposed, 67 applications for leave to apply for Judicial Review, 27 applications for Judicial Review and no ancillary applications were received. Chancery Division business included receipt of 295 applications, 71% which were Chancery, 15% bankruptcy and 14% companies cases and disposal of 294 cases. The Chair advised that the Masters Court is back up and running with in person hearings and reviews and there has been a massive change. Master Harvey has taken up his new post and is to be congratulated for the work completed in such a short space of time.

### **Judicial Modernisation Update**

6. Mrs McMurray advised that [Practice Direction 2/2022](#) was issued on 1 June 2022 and aims to standardise the submission and format of e-bundles received regardless of source to include the requirements of the Judges using these. As noted at the last meeting, the use of e-bundles will largely be limited to those areas within the High Court where they are allowed for within existing practice directions or with the permission of the Judge. The current position is that there has been initial implementation within the High Court

and there will be a period of letting that embed before rollout to other areas is considered. A remote e-bundles training session for High Court judiciary and Masters took place on 14 September 2022. The training was facilitated by the Bar Library's Optimised Brief & Bundles Service (OBBS) team and while it focused specifically on OBBS the skills demonstrated are largely transferrable to electronic bundles produced by other products. The Chair stated that he hoped the implementation of e-bundles will be swiftly rolled out to other areas. The Chair confirmed that a couple of brain injury settlements have been dealt with using e-bundles but no trials as yet have been completed from start to finish and he hoped that this would soon happen.

7. A draft Electronic Discovery (e-discovery) Checklist was circulated for targeted consultation during the summer recess. Following receipt of responses, a final version was submitted to the Lady Chief Justice for approval. The checklist has now been added to Practice Direction 1 of 2022 (PD 1/22) as a new appendix (Appendix H), effective from 26 September 2022, and is intended as an aid to those considering the approach to discovery in accordance with Paragraph 28 of PD 1/22 which encourages practitioners to agree a discovery plan which focuses on a collaborative and proportionate approach to discovery which is both time efficient and cost-effective. This includes consideration of e-discovery within the principles of Order 1, Rule 1(A) and Order 24 to the Rules of the Court of Judicature (NI) 1980 (as amended).
8. Practitioner training for BOX was delivered to 206 solicitors in August and judicial training is scheduled on 5 December. (BOX was established for use within the Commercial Hub to enable practitioners to file documents electronically in accordance with the requirements of the Commercial Hub Practice Direction No. 1 of 2019 which has been superseded by Practice Direction No. 1 of 2022 which came into operation on 1st February 2022).
9. Master Harvey explained that there is a difficulty with opening e-bundles due to the different formats being used between courts and profession. Courts are still asking for paper copies as well as electronic copies. Master Harvey expressed his willingness to receive electronic copies only but the format being used would need to be rectified. He confirmed that he receives interlocutory case documents via email and he can receive these by PDF. He suggested that Cormac Fitzpatrick could issue a statement to the Law Society and Bar Counsel regarding formats. The Chair acknowledged that the issue of formats would merit further discussion but might be best to leave to the Judicial Advisory Group to take forward. Mrs Ward confirmed that a sub-group of the JAG has been established to consider the increased use and, consequently, format requirements of e-bundles. His Honour Judge Devlin suggested it would be helpful for training to be received and guidance issued

for extradition Judges as they use e-bundles but have not received the training yet.

**Action: Karen Ward to take forward the issue of e-bundle formats to Judicial Advisory Group – Vision 2030 and Cormac Fitzpatrick to issue a statement to the Law Society and Bar Council.**

**Vision 2030: Judicial Advisory Group**

10. Mrs McMurray advised that the first meeting of the Vision 2030 Judicial Advisory Group, chaired by Mr Justice Huddleston, took place on 29 November 2022. While not a governance board, the Judicial Advisory Group (JAG) has been established to inform and advise the NICTS of the operational judicial modernisation requirements across all court tiers and business types; and to help give effect to the supporting culture and practice change within the wider judiciary and legal profession. It aims to complement other stakeholder advisory groups established under the Vision 2030 Portfolio. Nominated members represent the judiciary across all tiers (including the Chairs of the Shadow Civil Justice Council and Shadow Family Justice Board to align priorities and work focus), the Bar and the Law Society, including the Young Bar and Young Solicitors Associations, and Vision 2030, reform and operational leads from the NICTS and the Lady Chief Justice's Office. Members are expected to act as a channel to colleagues and peers in communicating and championing the business and culture change. At the meeting on 29 November 2022 it was agreed that small sub-groups would be formed from the overall membership to focus on particular business areas, which may be taken forward simultaneously, subject to capacity. The membership of each sub-group is to be refined in the coming weeks and inaugural meetings of each will be arranged by the secretariat. Where appropriate, other 'experts' (e.g. academic) may be invited to contribute or join a sub-group for a defined 'project' or 'task', with meetings arranged to focus on particular, discrete or specialist areas of business, in line with the overall modernisation plan or priorities (as agreed with the NICTS). The nature and frequency of meetings and outputs required will evolve to translate high level aspirations into practical requirements throughout the initial scoping phases, to procurement and competitive dialogue and into lower level design as the modernisation programme progresses over the next 5 years.
11. The Chair advised that he has been invited to join the King's Bench Sub Group and the next meeting has been organised for this month. He has been invited to make submissions on the Terms of Reference from 29<sup>th</sup> November 2022 and he is happy to contribute. Mrs Ward has presented at the group and echoes the value of the group.

## **Operational Modernisation Update**

### **Digital Programme**

12. Mrs Ward updated members that the Courtroom Refresh Project has upgraded the audio and visual technology within 64 courtrooms. The remaining three will complete once stock becomes available and access to the courtrooms can be secured thereafter. The next phase of this Project will focus on the installation of Public Information Displays across the venues and work has commenced with the supplier to agree delivery plans.
13. Mrs Ward reported that extensive stakeholder engagement has been a key focus of the Team, with more than 65 workshops completed with staff and stakeholders to date to capture requirements for the Future Core Solution, which will replace the majority of the internal IT systems (including ICOS) and will provide the platform for enhanced and new online services, with the provision of a self-service portal for use by members of the public and the legal profession. The detailed requirements will continue to evolve throughout the competitive dialogue period with potential suppliers, and the plan is to go to market early next year.

### **The NICTS Research into Remote Technology**

14. Mrs Ward updated members that, as reported to the last meeting, the NICTS has commissioned the Northern Ireland Statistics and Research Agency (NISRA) to conduct independent qualitative research to help the NICTS to learn from their experiences of using remote technology during the pandemic – both from an operational process and technological perspective. The NISRA report has been received by the NICTS and has been published on the DoJ website. Mrs Alison Houston has arranged distribution to the Judiciary. Mrs Ward confirmed that updates will continue to be provided regarding upgrading technology and any additional upgrades will be subject to funding.

### **Service Design**

15. Mrs Ward reported that work is continuing on the development of a new case management system for the Official Solicitors Office and the Office of Care and Protection and this is scheduled to go live in March 2023. The NICTS have recently implemented the Planning Appeals Commission and Water Appeals Commission Case Management System and a contract has been awarded for the development of a new case management system for the Parole Commission, which is due to go live in August 2023.

16. Mrs Ward updated members that discovery work has begun to look at scope to improve the Enduring Power of Attorney (EPA) process and to explore the potential to introduce a digital solution, similar to that used for online Probate applications. This work will continue until March 2023, by which stage a plan to move forward should be agreed. The team is also looking at how the jury management process can be streamlined and digitised – again this work began in September and the discovery phase is due to complete in March 2023.

### **Estates Programme**

17. Mrs Ward updated members that PACWAC has recently relocated from Park House to the AIB Building in Ann Street, Belfast. Mrs Ward explained that work continues to develop the design requirements for the RCJ Infrastructure Upgrade Project and to begin work on the development of the Outline Business Case. The NICTS is engaging the services of CPD to agree a new procurement strategy for the Old Town Hall restoration following the previous market failure. It is anticipated that the new procurement will launch in Spring 2023. Mrs Ward advised that it is planned the Old Town Hall will be utilised by the Coroners Service as the anchor tenant and will provide flexible space for other non-criminal business. Work has also restarted to look at the strategic case for the North West Accommodation Project.
18. Mrs Ward updated members that early preparatory work continues in relation to the future Estates Strategy and it is envisaged that an Estate Strategy Advisory Group will be established in coming months to provide input to this work. The Chair suggested that witness boxes within the RCJ should be looked at as it is not possible to hear from more than one witness at a time in Commercial Action hearings. The Chair also explained that the Sightlink within the RCJ does not allow the witness on the link to see who is speaking in the courtroom which causes difficulties.

### **Litigants in Person**

19. The Chair updated members that the Reference Group continues to focus on supports for LiPs in Family Proceedings. The last meeting of the Group took place in September when the Department was able to confirm it has agreed to fund the maintenance of the tools for LiPs in Private Family law cases developed by UU. In line with the intention that the Chair will only remain in place for a few years, the first Chair of the Reference Group, Sinéad Mulhern, has recently stepped down and has been replaced by Les Allamby who will Chair his first meeting on 13 December 2022.
20. The Chair noted his thoughts on the impressive website funded by the DoJ and created by the Ulster University offering excellent aids and tools for

Litigants in Person. The Chair informed members of the training event which took place for Judiciary and advised that the data received during the event was being collated by Professor McKeever on how Litigants in Person are perceived in the courts. Professor McKeever is also liaising with District Judge Meehan and District Judge Prytherch for further research.

21. Master Harvey discussed his experience with Litigants in person and noted that drafting guidance may be difficult. Mr Fitzpatrick noted a recent judgement by Master Bell [\[2022\] NIMaster 8](#) which members may find helpful.

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

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

22. Ms McAlpine updated members that the Department hopes, subject to the views and agreement of an incoming Minister of Justice, and subsequent Executive approval, to include provision relating to minor settlements in a Modernisation of Justice Bill in the first 6–8 months after the Assembly returns. This would provide for all cases involving a minor to be required to come to court for approval of the proposed settlement. There is also an ongoing judicial review application in which the applicant seeks to challenge the Motor Insurers' Bureau procedure listed for review this month, which provides for minor settlements to be concluded without a court approval process.

### **Pre-Action Protocols (PAP's)**

23. Master Harvey has taken over from Master McCorry as Chair of the Sub-Committee with the next meeting taking place on the 9 January 2023. The draft Pre-Action Protocol Consultations for Commercial Actions, Personal Injury and Damage only Road Traffic Accident Claims incorporating Credit Hire and Ejectment Proceedings have now closed. The revised drafts were shared with the Shadow Civil Justice Council for today's meeting for approval.

**Action: Secretariat to arrange for the pre-action protocols for Ejectment, Commercial Actions, Personal Injury and Damage Only Road Traffic Accident Claims to be taken forward for issue.**

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

24. Master Harvey updated members regarding the Protocol for Clinical Negligence Litigation in the High Court and Practice Direction for Experts which was issued on 29 September 2021 (Practice Direction 2/21). The draft for the County Court was prepared and issued for consultation. The

consultation has now closed, and a revised draft has been shared with members for approval at today's meeting.

**Action: Secretariat to arrange for the pre-action Protocol for Clinical Negligence in the County Court to be taken forward for issue.**

### **Accreditation/Masters Speech to CNPG Conference**

25. Master Harvey suggested that a review/accreditation of the current High Court Clinical Negligence Practice Directions and Pre-Action Protocol should take place in September/December 2023.

### **Defamation Pre-Action Protocol & Defamation Act**

26. Master Harvey advised that the Pre-Action Protocol was issued on the 4 October 2022.

### **Review of Practice Directions**

27. Mrs McMurray updated members that the review of Practice Directions is ongoing. We are currently working with the LCJO's legal team to establish which of the currently listed Practice Directions are now obsolete and a further update will be available at the next meeting.

### **Alternative Dispute Resolution and Mediation**

28. Mrs McAlpine advised that the commercial consortium leading the online dispute resolution pilot (Consumer Code for Online Dispute Resolution (CCODR)) is continuing work on development of potential funding streams to allow a trial involving cases which would normally fall to the small claims court. The Department will provide further updates as work progresses. The General Authority which launched on 14 February 2022 to allow mediation in non-family cases without the prior authority of the Legal Services Agency is continuing to operate. The Department is reviewing effectiveness of the early stages and will provide further updates as work progresses.

### **County Court and Small Claims Court**

29. Mrs McAlpine advised members that the small claims jurisdiction increased in October to £5k. The other changes to the County Court will have to be dealt with in longer time given the resource implications. The department has also noted that it is likely that primary legislation will be required before clinical negligence cases can be removed from the general civil jurisdiction.

### **Civil Hearing Centres**



30. Mrs McMurray confirmed that a meeting had taken place between NICTS staff and LCJO staff pre covid to discuss the potential for a Civil Hearing Centre in Belfast. Progress was delayed due to Covid, but it is hoped that the initiative can be picked up again. The Chair noted the comments from members on the need for the civil hearing centres to be progressed and the requirement for sufficient Judicial resources to be in place.

### **Update from King's Bench Division**

#### **Review of Clinical Negligence Writs**

31. Master Harvey updated members that at his request, a report was run for the period from 2010 to 2021. The report identified 118 writs which have not yet been subject to a Master's review. These cases are being listed for review before him.

#### **Review of Personal Injury Actions**

32. Master Harvey advised that a review has identified 10,992 writs still live on the system. These writs are to be broken up into tranches of 500 with letters to issue from the NICTS to ascertain the status of the cases and either remove from the system or list for review before the Master.

#### **Quarterly reports**

33. Master Harvey updated members that from 1st January 2023 the NICTS will also be running a series of reports, including number of writs, disposals and length of time from issue to disposal as well as all clinical negligence writs over 48 months post issue. Master Harvey will be provided these reports for review on a quarterly basis and the first series was received last week.

#### **Updated Masters' Review Guidance**

34. Master Harvey updated members that the revised King's Bench Masters' Court Guidance, to include new Review Questionnaires will come into effect on 10 November 2022 (see attachment from members papers). In advance of this, Master Harvey had drafted guidance in relation to Clinical Negligence reviews which has issued to the Law Society and Bar for dissemination to Practitioners. Master Harvey gave a talk to the Clinical Negligence Practitioners Group conference in the Law Society on the 2<sup>nd</sup> December 2022 at which he reinforced the new arrangements. Mr Fitzpatrick noted the work undertaken so far by Master Harvey and the benefits it had for stakeholders.

#### **High Court Pre-Action Protocol Review**

35. Master Harvey has asked this to be added to the agenda for today's meeting [Practice Direction 1 of 2008.pdf \(judiciaryni.uk\)](#) and it was agreed that a review of this protocol be taken forward by the sCJC Sub-Committee on Pre-Action Protocols.

### **Civil Priorities**

36. Members noted the Key Priorities Refresh Paper for consideration at today's meeting and endorsed the recommendation that Experts and McKenzie Friends be noted as priority areas.

### **Next Meeting**

37. It was agreed the next meeting of the Shadow Civil Justice Council would take place on the 8<sup>th</sup> March 2023 at 4:15pm. Mrs McAlpine advised members that this would be her last meeting as she is retiring in February 2023. The Chair thanked Mrs McAlpine for all her work as a member of the sCJC and noted the help and support she had given others during her career.