

SHADOW CIVIL JUSTICE COUNCIL (sCJC) ADVISORY GROUP

WRITTEN UPDATE 7th April 2020

In light of the current Covid-19 pandemic, it is not possible to hold a formal meeting of the Advisory Group at this time, nor to predict when such a meeting might be arranged. This paper is therefore to update Advisory Group members of developments since the last meeting on 8th October 2019. The minutes of the fifth meeting of the sCJC held on 17th September 2019 have been published and are available at the following link:

<https://judiciaryni.uk/publications/minutes-fifth-meeting-shadow-civil-justice-council-held-17-september-2019>

One further meeting of the sCJC has taken place, this was the sixth meeting of the group and was held on 11th March 2020.

KEY PRIORITY AREAS - PROGRESS UPDATES

The developments in the five key priority areas are as follows:

1) Digitisation for & in court

➤ Courtroom Technology

The rollout of the new courtroom technology and secure Wi-Fi continues, with 20 courtrooms having been upgraded to date. The intention is to commence the technology upgrade in RCJ courtrooms in summer 2020, starting with the Commercial Court and the Masters' Court.

Cabling and installation of Wi-Fi in judicial chambers in RCJ has been completed. Technology refresh in the Masters Chambers is due to be completed by Easter.

➤ Line of Business Review

PA Consulting are conducting a review of NICTS line of business systems setting out recommendations on the future digital roadmap for NICTS. A wide range of stakeholders including OLCJ and the legal profession are being consulted as part of this review.

2) Online Dispute Resolution (ODR)

It is expected that the NICTS Modernisation Portfolio Vision Statement will make reference to ODR as something that will be considered going forward but, due to other priorities and a lack of resources, it is unlikely to be given priority in the 2020/21 period.

3) Litigants in Person (LIP)

➤ LIP Reference Group

As indicated at the last meeting of the sCJC Advisory Group, a response has issued to the LIP Reference Group stating that it would not be appropriate to consider changes to include a representative of the Group as a member of the sCJC at this time.

The LIP Reference Group has been in operation for a year and has now met four times, focusing largely on practical actions, such as improvements to the accessibility of information and the physical environment in court venues. The Group has also begun to examine the issue of McKenzie friends. Members of the Reference Group are also working with University of Ulster to develop tools to assist LIP, which will then be tested in court.

The Chair of the LIP Reference Group, Sinead Mulhern, has accepted an invitation to attend the next meeting of the sCJC to provide an update on the group's work.

The sponsors of the LIP Reference Group organised a workshop on working with distressed litigants in person as part of a wider two day visit by the Access to Justice Foundation on 10th - 11th February which was well attended and reported to be beneficial. The sCJC Chair has suggested that those developing the policy for NI take into account the experience of the judges, the Access to Justice Foundation, and wider groups involved in such proceedings, when debating the way forward for this jurisdiction.

4) Commercial Hub

Mr Justice Horner has established a Commercial Hub Liaison Committee comprising of members from the Bar, Law Society and NICTS. The inaugural meeting was held on 21 October 2019 and it was agreed that regular meetings would be convened going forward to provide a collaborative view as the Hub develops particularly in relation to digitisation.

Mr Justice Horner aims to have the Commercial Hub operating on a paperless basis by summer 2020; he has agreed to deliver further presentations for commercial practitioners regarding this aspect and revisions to the Practice Direction which are under consideration by the Committee.

There has been a review of the efficacy of witness statements in the Commercial Court in E&W and the sCJC will keep a watching brief on the outworking of the review's recommendations. Advisory Group members may wish to view the [Report from the Witness Evidence Working Group on 'Factual Witness Evidence in Trials before the Business and Property Courts'](#) and also the [notice from the Judge in Charge to Users of the Commercial Court on factual witness evidence](#).

5) Disability

➤ Hearing Impaired Litigants

The Judicial Studies Board (JSB) hosted an 'Access to Justice for Deaf and Hearing Impaired People' workshop for all judiciary on 7th November 2019 facilitated by the NI Branch of the British Deaf Association ('BDA'). The workshop, the feedback for which was positive, addressed the following:

- The Deaf Identity
- British Sign Language (BSL), Irish Sign Language (ISL) and English
- Communication with Deaf People
- Communication Professionals
- Barriers to Communication
- Deaf People within the Courtroom

JSB also arranged for a number of the judiciary to be surveyed for the purpose of the BDA Report which was subsequently launched at an event on 11th December 2019 attended by the JSB Chairman and other judiciary. The summary report (including recommendations) and a leaflet containing tips for justice professionals can be viewed [here](#).

➤ NICTS Disability Sub-committee

NICTS are currently taking forward a number of priority pieces of work under the Modernisation Programme including surveys of the entire NICTS estate and a review of all IT line of business systems. NICTS are committed to establishing a Disability Sub-committee, but consider to do so at this point may be premature pending a full review of their Estate and ICT Strategies in consultation with section 75 groups. In the interim they advise that they continue to adopt best practice guidance and consult with relevant representative groups (including disability groups) when changing or amending public facing procedures / communications.

KEY PRIORITY AREA REFRESH

The newly appointed Justice Minister will require time to consider the recommendations from the Civil and Family Justice Review, which was published after the collapse of the Assembly, including the recommendations in relation to establishing the Civil Justice Council on a statutory basis. Primary legislation will be required to place the Civil Justice Council on a statutory footing and none of the four Bills in the current mandate provide for this, so it will continue in its current shadow mode for some time.

At the last meeting members of the sCJC Advisory Group were asked to consider refreshing the key priorities, and to submit suggestions as to what further areas

should be prioritised for the sCJC to progress while it is constrained in shadow mode.

Having considered the suggestions received from both sCJC members and members of the Advisory Group, the sCJC has agreed the following approach:

- **'The Commercial Hub'** should be noted as largely achieved and should be removed as a priority area going forward.
- **'Digitisation and paperless courts'**, **'Online Dispute Resolution'** and **'Disability'**, should all be considered as 'in progress' with updates provided annually unless the position changes.
- **'Personal Litigants'** should be reconfirmed as an ongoing priority area for the coming year.
- It was agreed that:
 - **'The County Court and Small Claims Court'**,
 - **'The overriding objective: an efficient and timely process'** and
 - **'Alternative Dispute Resolution and Mediation'**

should be recognised as new priority areas for the coming year.

- The sCJC Chair welcomed the offer of advisory group members to become involved in reviewing and designing pre-action protocols, and OLCJ will make contact to progress this project in due course.

OTHER AREAS - PROGRESS UPDATES

Clinical negligence

- Sub-Committee on Accreditation to Undertake Clinical Negligence Cases

The Law Society's Clinical Negligence Practitioners Group (CNPG) is developing a new protocol which aims to improve professional standards, covering all stages post commencement and right up to trial in clinical negligence cases. It will provide clear guidance and direction of every stage in the process with an option for sanctions if the directions are not followed. It will be accompanied by a second document dealing with experts which will be based on the commercial experts practice direction adapted for clinical negligence. The completed draft is to be presented to the Clinical Negligence Liaison Committee and will then go to the Law Society Council for its approval, a process which ought to take until May 2020. It will then be sent to the Bar Council and the sCJC.

Representatives of the CNPG are to be invited to attend the next meeting of the sCJC to address members on the protocol.

Alternative Dispute Resolution and Mediation

➤ Consultation on legal aid funding for intra-litigation mediation

In advance of public consultation, the DOJ intends to engage with key stakeholders in the legal profession and judiciary. The consultation is expected to issue in the next few months. Once new arrangements are in place, the DOJ will want to evaluate how they work in practice and would appreciate further input of key stakeholders, including the judiciary, as part of that process.

The county court and small claims court

➤ Civil Hearing Centres

NICTS has engaged NISRA to design and undertake Exit Surveys, which will inform their Impact Assessments and wider consultations with regards estates provision and potential for further centralisation of civil and family business.

NICTS, OLCJ and the judiciary have been working to formalise the hearing centre in Armagh and plan to extend the pilot to Belfast. It is expected that the Belfast hearing centre will deal with cases currently heard at Antrim, Downpatrick, Newtownards and Lisburn with an allocation of 2 judges sitting simultaneously for at least 2 weeks each month. Changes will be communicated at least 6 weeks in advance.

➤ DOJ Consultation on County Court jurisdiction

DOJ have drafted a consultation paper on the financial jurisdiction of the County Court for Ministerial approval. They advised that the proposals reflect the need for the Civil Hearing Centres pilot to be working well in terms of efficiency for the proposed change to take effect.

Out of court settlements of cases involving unrepresented minors

At the last meeting of the sCJC Advisory Group, members were advised of the concerns raised regarding out of court settlements of cases involving unrepresented minors. The sCJC Chair and Judge Brownlie met with representatives of the insurers involved in settling such claims to discuss the extent of the problem and determine if the insurers' Code of Practice (CoP) could be refined to address the primary concern that the rights of the minor are protected, and that the financial compensation to which they are entitled is properly invested and protected. The Insurers representative undertook to feed back to his members the discussion and the judiciary's recommendation of representation for all minors and persons under disability, regardless of claim value and provide a formal response. The response received fell short of what had appeared to the judiciary to have been accepted as the agreed way forward. It was subsequently decided that the sCJC should advocate

for legislative intervention. The DOJ are to provide an update at the next meeting on how this might be taken forward.

Discount rates – Personal injuries cases

The Minister has asked officials to undertake the statutory consultation with the Government Actuary and the Department of Finance on a proposal to change the discount rate. The Minister will, in due course, give consideration to reviewing the mechanism of how the rate in Northern Ireland is set. The DOJ is unable to indicate a timeframe for either process at this point.

BUSINESS CONTINUITY ARRANGEMENTS: COVID-19

Advisory Group members were updated by email on 2nd April on the business continuity arrangements implemented by the Lord Chief Justice following the Covid-19 restrictions announced by the Prime Minister.

The general guidance issued, along with the relevant business continuity forms and additional guidance on specific business areas, can be found on the JudiciaryNI website at the following link: <https://judiciaryni.uk/coronavirus-covid-19>. These will be updated and re-issued as and when required.

Next Meeting

It is not feasible to arrange a meeting at this time, but should members wish to clarify any matter in this update or raise an issue for consideration at the next meeting, they are encouraged to contact the secretariat by email.