

SHADOW CIVIL JUSTICE COUNCIL

Minutes of the Thirteenth Meeting of the shadow, Civil Justice Council held on 15th September 2022 at 4.15 pm via WebEx video conferencing.

Attendees: Mr Justice McAlinden (Chair)
HHJ Devlin
District Judge Duncan
Mandy Kilpatrick (LCJO)
Paul Andrews (LSA)
Liam McCollum QC (Bar Council)
Karen Ward (NICTS)
Cormac Fitzpatrick (Law Society)
Michael Foster (DoF)

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 Laurene McAlpine. The Chair placed on record his thanks to Master McCorry for his work as a member of the sCJC and also as Chair of the sCJC Sub-Committee on Pre-Action Protocols.

Previous minutes - shadow Council meeting on 10th March 2022

2. The minutes of the last meeting 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. 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

Covid-19: Business Continuity & Recovery

Judicial Update

4. Mrs Kilpatrick provided an update on behalf of LCJO and advised that the Lady Chief Justice's Office issued updated guidance on the Judiciary NI website on 22 June 2022. The guidance on Remote, In Person & Hybrid Attendance has been developed to balance the efficient dispatch of business and the interests of justice both while the public health guidance applies and beyond. Over the summer NICTS increased capacity in courts to reflect the reduction in social distancing requirements to 1m and with staff returning to offices and winter approaching this is unlikely to change. The reduction to 1m social distancing enabled an increased number of people and practitioners to attend court in person unless directed not to, or unless courts adopt remote methods for certain types of hearings. It is important that courts adopt the learning opportunities brought about by the pandemic. The Chair noted that NICTS should receive credit for the systems that have been installed and the quality of the video link systems. Mrs Ward thanked the Chair for his comments and confirmed that she would pass on the comments to the team.
5. Mrs Kilpatrick explained that there is an opportunity to use newly available technology and the increased digital experience of judges and court users as a platform for wider reforms to improve access to justice. The use of digital technology for certain types or stages of cases or where certain types of evidence is to be given has recognised benefits and it is essential that these are retained as we move towards, and beyond, recovery from the pandemic while maintaining the integrity and structure of the court. The key message is that proactive consideration must be given, to identifying where hearings and parts of hearings can be effectively achieved remotely.

Operational Update

6. Mrs Ward updated members on the Courtroom Refresh Project, the audio and visual technology has been upgraded 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 our venues and work has commenced with the supplier to agree delivery plans. Work has also continued over the summer period to engage with staff and stakeholders to capture the high-level system requirements for the new Future Core Solution. Having just received business case approval the Future Core Solution will incrementally replace the NICTS line of business systems and provide a public facing portal for improved online services. This solution will be implemented between 2025 and 2029. Mrs Ward advised that stakeholder engagement has been critical and to date 63 workshops have taken place.

7. Mrs Ward advised that the Minister of Justice launched a public consultation on audio and video 'live links' for court and tribunal hearings on the 29 July 2022, the consultation will close on the 26 September 2022 and the consultation link has been shared with members in advance of today's meeting. Mrs Ward updated members that following engagement and agreement with a range of stakeholders, NICTS has commissioned NISRA to conduct independent qualitative research to help us learn from our experiences of using remote technology during the pandemic. This research will help us understand what has and has not worked well, and to inform future technological and process improvements. Findings will also be shared with the LCJO to help inform their ongoing work regarding the types of business where a remote or hybrid approach could work well. Invitations to participate in the research have been issued to a number of stakeholder groups and individuals with the research taking place during June and July. Mrs Ward advised that a meeting with NISRA has taken place and subject to stakeholder availability it is anticipated that the NISRA report will be available in early October. Mrs Ward confirmed that the University of Ulster had been invited to participate in the NISRA research.
8. District Judge Duncan raised the issue of where a party seeks to adduce evidence in a civil or family matter from a voluntary witness by way of video-link from abroad, the party should provide the court with confirmation that the relevant foreign state permits the giving of evidence from within its territory and queried whether there is a list of countries that permit a witness to provide a testimony. The Chair advised that he was aware that the issue was currently being considered by the Lady Chief Justices Office and advice would be shared once received.

Action: Secretariat to check position on advice on receiving evidence from witness outside of the jurisdiction.

9. Mrs Ward advised that the Probate Portal continues to receive positive feedback from staff, solicitors and personal applicants. Work is also continuing on the development of new case management systems for Official Solicitors Office and the Office of Care and Protection which is planned go live in October 2022 and Planning Appeals Commission and Water Appeals Commission the indicative go live date is September. Subject to business case approval, a procurement is also due to commence for a new case management system for the Parole Commission. Mrs Ward added that discovery work will begin in September 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 use for online Probate applications. This work will continue until March 2023, by which stage a plan to move forward should be agreed. Mrs Ward added that work is also underway in relation to Jury

management and around 300 jurors have participated in the survey which will assist in determining how jury service can be streamlined.

10. Mrs Ward updated members on the work of the Integrated Consultancy Team and NICTS Estates Modernisation Team have commenced work to capture the design requirements for the upgrade of the infrastructure within RCJ and a number of focus groups have been held with staff, the judiciary and key stakeholders. In addition a re-start of work on the North West Accommodation Project is planned for September 2022, which will include a revision of the Strategic Outline Case. Work is also continuing on the development of an Estates Strategy and some early engagement with a number of stakeholders is planned to begin in October.

Litigants in Person

11. The Chair updated members on the work of the Litigant in Person Group where the focus continues to be on support for LiPs in family proceedings. The Group has assisted with the development of tools, being produced by the Department under the Private Law Action Plan. The Department has also agreed to fund the maintenance of the pathfinder and website repository of information developed by UU with Nuffield funding. The further development of the tools will be a matter of future discussion. The Chair advised that research which was previously due to be carried out by engaging with LiP's attending court is now being conducted by a team from Glasgow using Q methodology and a report is expected at the end of 2022/early 2023. The next meeting of the Group is scheduled for the end of September, for which the Chair expects to produce a report detailing progress to date and a presentation from His Honour Judge Cotter will also take place.

Out of Court Settlements

12. The Chair updated members on the progress of Out of Court Settlements involving minors. Subject to Executive approval, the provision for all cases involving minors to be required to come to court for the court to approve the proposed settlement included in a Bill to be introduced Spring 2023. This will be subject to there being an Executive in place. The Chair noted the concern that this would lead to an increase of applications before the court. The Chair advised that there is also a pending Judicial Review case in which the Applicant seeks to challenge the MIB Motor Insurers Bureau procedure, which provides for minor settlements to be concluded without a court approval process, the case has been listed for a 3 day hearing commencing on the 23 November 2022.

Action: Mrs McMurray to report concerns regarding pressure on existing resources in relation to all court settlements involving minors coming before the court for approval.

Overriding Objective- Pre-Action Protocols

13. HHJ Devlin updated members on the work of the sub-committee which had been Chaired by Master McCorry. Master Harvey will now take over as Chair of the Sub-Committee with the next meeting taking place on the 3 October 2022. Draft Pre-Action Protocols for the following, Commercial Actions, Personal Injury and Damage Only Road Traffic Accident Claims incorporating Credit Hire and Ejectment Proceedings have all been issued for consultation. The consultation will close on the 30 September and responses will be shared with members. HHJ Devlin advised that a Protocol for Clinical Negligence Litigation in the High Court and Practice Direction for Experts issued on 29 September 2021(Practice Direction 2/21). A draft for the County Court has been prepared by a working group and is due to issue for consultation.
14. HHJ Devlin updated members on the draft Defamation, Media and Communication Claims Pre-Action Protocol. A previous draft had been issued for targeted consultation on the 7 March 2022, which was held back from being issued pending the outcome of the Defamation Bill, which received Royal Assent on the 6th June 2022. The draft was then revised to take account of the changes required due to the passing of the Defamation Act and the consultation responses. It is hoped the revised Pre-Action Protocol will issue in advance of the Halloween recess.

Alternative Dispute Resolution and Mediation

15. The Chair updated members on the commercial consortium leading the online dispute resolution pilot Consumer Code for Online Dispute Resolution (CCODR) continues to work on project development including the funding stream in respect of which they continue to hope to secure investment from financial institutions which are bulk users of the small claims court. The Department will provide further updates as work progresses. The General Authority allowing mediation without the prior authority of the Legal Services Agency in non-family cases issued on 14 February 2022. It provides for mediation to be conducted under a set hourly rate and within a cap on hours. The Chair noted that as the pilot has now been in operation for six months the Department intends to conduct an early review of uptake and effectiveness, that will include qualitative information from the legally aided client and their solicitor who have been invited to fill out satisfaction questionnaires.

County Court and Small Claims Court

16. The Chair updated members on the increase to the small claims' jurisdiction. The small claims jurisdiction will increase to £5k in October. The other changes to the county court jurisdiction 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. The Chair noted the concerns around resources and that discussions are to take place with the Department. HHJ Devlin discussed the draft rules in respect of Order 14 Summary Judgements and enquired if there had been any progress. Mrs Kilpatrick advised that enquiries would be made with the legal team.

Action: Mrs Kilpatrick to confirm the position in respect of draft rules for Order 14 Summary Judgements.

Civil Hearing Centres

17. Mrs McMurray updated members on progress around the establishment of civil hearing centres. LCJO have met with NICTS staff 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 with the return to more normal footfall. Mrs Ward advised that work is still in progress to utilise the Old Townhall building, and it will run as a separate project in tandem with the Royal Courts of Justice.

Digitisation for & in court

18. Mrs McMurray updated members on the progress of the e-bundles pilot. Practice Direction 2/2022 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. Mrs McMurray advised that a remote e-bundles training session for High Court judiciary and Masters took place on 14 September. 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. NICTS are still exploring options for the secure storage of e-bundles, which will include a review of retention and disposal schedules for electronic documents. Plans to extend the use of e-bundles beyond the High Court is subject to resolution of the storage arrangements. Mrs McMurray confirmed a draft Electronic Discovery (e-discovery) Checklist was circulated for targeted consultation during the summer recess. The draft proposed is a

new appendix to Practice Direction 1 of 2022 (PD 1/22) 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). All responses to the consultation have now been received and a final version of the checklist has been submitted to the LCJ for approval. The Chair noted concerns that smaller solicitor firms may struggle with paperless files.

Action: Mr Fitzpatrick to bring issue of support required for smaller solicitor firms preparing for paper light courts to the attention of the Law Society.

Disability

19. Mrs Ward updated members on discussions that had taken place with Sheila McGivern of the Legally Able Group. Mrs Ward advised that a meeting has taken place and Mrs McGivern has agreed to join the Stakeholder Advisory Group.

Next Meeting

20. It was agreed the next meeting of the sCJC would take place on the 8th December at 4:15pm.