

SHADOW CIVIL JUSTICE COUNCIL

Minutes of the First Meeting of the shadow Civil Justice Council held on 9 October, 2017 at 4.00 pm in Judges' Common Room, Royal Courts of Justice, Belfast

Attendees: Lord Justice Gillen (Chairman)
Lord Justice Deeny (Incoming Chairman)
Judge Devlin
District Judge Brownlie
Master McCorry
Liam McCollum QC (Bar Council)
Paul Dougan (Law Society)
Paul Andrews (Legal Services Agency)
Laurene McAlpine (DoJ)
Michael Foster (DoF)
Peter Luney (NICTS)
Maura Campbell (PPS to the Lord Chief Justice)
Julie McGrath (OLCJ)

In attendance: Wendy Murray (Secretariat)

1. The Chairman welcomed everyone to the meeting and expressed his thanks to the members for agreeing to participate in the work of the shadow Council. The Chairman briefly set out in broad terms the purpose of the shadow Council, principally to facilitate the implementation of the recommendations contained in the Civil Justice Report. The Chairman advised that he was pleased that Lord Justice Deeny had agreed to carry the work forward after the Chairman retires in November.

Terms of Reference for the shadow Civil Justice Council [CJC (17/01)]

2. The Chairman advised that he was very keen to maintain the momentum that the Review has created and, subject to available resources, a number of the more operationally-focussed recommendations should be capable of being progressed in the shorter-term.

3. The Chairman invited members to agree the proposed terms of reference for the shadow Council and to consider how best to involve lay representatives.

4. Members agreed:

- (i) the proposed membership;
- (ii) lay involvement should be facilitated through the creation of an Advisory Group (and sub-committees as required);

- (iii) the shadow Council should meet once per term (three times per year) or more often as the Chair may require;
- (iv) the Advisory Group should meet at least twice per year.
- (v) the proposed Secretariat.

Remit

5. Mrs McAlpine expressed a reservation in respect of the wording of the first bullet point of the proposed remit as Departments do not know what Ministers' priorities will be. The Chairman agreed an amendment to the first bullet point to read 'oversee the co-ordination of a draft plan for the implementation of the recommendations of the Civil Justice Report *as accepted by lead organisations*'.

6. Mr McCollum QC suggested, and the Chairman agreed, that the remit should not be seen as 'static' and could include such matters in the future as the Civil Justice Council may see as appropriate. This was agreed.

Allocation of Recommendations from the Civil Justice Report [CJC (17/02)]

7. Lord Justice Deeny suggested that recommendation CJ10, 'a minimum level of IT literacy to be a prerequisite for judicial preferment', should be allocated to NIJAC and this was agreed.

8. Mr Andrews suggested that the Legal Services Agency be included as an interested Department/Body to a number of recommendations. He undertook to circulate a list he had prepared.

9. The members otherwise agreed the proposed table of allocations with no amendments.

Prioritisation of Recommendations [CJC (17/03)]

10. The Chairman acknowledged that a phased approach to implementation will be required for a number of reasons, including the absence of a functioning Executive, financial constraints across the public service and the longer-term nature of some of the Review recommendations. However, he indicated that both he and Lord Justice Deeny were keen to maintain the momentum that has been created during the Review and therefore, notwithstanding these factors, suggested five priorities to get the discussion started.

Progress in digitisation and paperless courts

11. Mr Luney addressed the shadow Council. He advised that the NICTS Board, of which Lord Justice Deeny is a judicial representative member, had asked for some adjustments to be made to the draft NICTS Digital Strategy. The Chairman asked for a copy of the Strategy to be shared with the shadow Council before Christmas. It was agreed that Mr Luney would provide a further update on progress at the second meeting of the Council. The Chairman and Lord Justice Deeny requested that the judiciary are engaged and kept fully involved in the change programme.

Online dispute resolution

12. Mrs McAlpine advised that DoJ colleagues were due to have a discussion with representatives of the money damages claims online pilot running in E&W on 16 October. She advised that implementation of the recommendations will be influenced both by financial resources and Ministerial priorities. Mrs McAlpine agreed to provide a further update at the second meeting. The meeting was informed that both the Dutch Scheme and the Relate Scheme in England had been discontinued.

Personal Litigants

13. A brief discussion on the subject of waiver of fees amongst members took place. Mr Luney confirmed that NICTS are looking at the policy, particularly appeal fees. He indicated that the Justice Committee may perceive any change to the waiver negatively and it would be important to get the narrative relating to any suggested change correct to ensure it made sense to the Committee as to why it is necessary.

14. It was agreed that the DoJ would lead on Personal Litigants with input from NICTS and others.

15. Judge Brownlie suggested that recommendation CJ84 could be implemented as a 'quick win' and said she would speak to Mrs McAlpine to discuss adapting the High Court guidance for the county court.

16. A brief discussion on what roles the Bar Council and Law Society could play took place. It was agreed that the Bar Council could remind members that legal authorities should be shared in a timely fashion with unrepresented parties, as should already be the practice. Mr Dougan agreed to raise with the Law Society the recommendation that the represented party send any LIP the guidance documentation on McKenzie Friends and undertook to provide an update at the next meeting.

17. The Chairman advised that it was important for all members of the judiciary to have a copy of the Equal Treatment Bench Book.

18. It was agreed that the Court of Judicature Rules Committee should consider recommending to DoJ that CJ72 be implemented i.e. a power be introduced to allow the court to direct that at where at least one party is a LIP, the proceedings be conducted by way of an inquisitorial form of process. It was also agreed that Mrs Campbell should contact Professor McKeever to request an advance copy of the report on the Litigants in Person NI research study.

19. Mrs McAlpine advised that the DoJ would be recommending an increase in the county court jurisdiction as a priority to the future Minister and suggested that perhaps the shadow Council should also adopt it as a priority. Mr McCollum QC advised that the Bar Council considered the necessary infrastructure was not in place to facilitate a potential increase in jurisdiction.

20. HHJ Devlin provided a verbal update on the successful pilot of a civil hearing centre in Armagh. He advised that feedback would be invited from the profession and other judiciary at a meeting of the Civil Users Group. This reminded the Chairman that he had decided not to recommend an increase in the county court jurisdiction as a priority at present to allow this pilot to continue and for the results to be analysed.

Business Hub

21. Mr Dougan advised that the Law Society agreed there is great potential in this recommendation but queried how much was predicated on other developments e.g. technology. The Chairman acknowledged the query but suggested that much could be done without other developments being implemented first. It was agreed that the Lord Chief Justice should be invited to nominate a judge to lead this work.

Disability

22. It was confirmed that both the Bar Council and Law Society have committees but no specific protocols or practices in place to ensure the requirements of disabled clients are catered for. It was noted that the Lord Chief Justice had appointed Judge McCaffrey as a Diversity Judge. The Chairman suggested that it might be beneficial for the Bar Council and Law Society to appoint a member as a point of contact on disability matters.

23. It was agreed that NICTS should establish a sub-committee to develop a draft implementation plan on these recommendations.

24. It was agreed that Mr Brian Symington should be put in contact with the NICTS sub-committee lead.

Any Other Business

25. Lord Justice Deeny expressed thanks to Lord Justice Gillen on behalf of the shadow Council members, the judiciary and professions for the invaluable work he has done over the course of the last two years on the Review.

Wendy Murray

Secretariat to the shadow Civil Justice Council

11 October 2017