

SHADOW CIVIL JUSTICE COUNCIL ADVISORY GROUP

Minutes of the Second Meeting of the shadow Civil Justice Council Advisory Group held on 8th October 2019 at 4.00pm in the Judges' Assembly Room, Royal Courts of Justice, Belfast.

Attendees: Mandy Kilpatrick (Chair, PPS to LCJ)
Glenn McKendry (NFU Mutual/ABI)
Scott Kennerley (The Consumer Council)
Samantha Sayers (The Law Centre NI)
Les Allamby (NIHRC)
Alastair Ross (ABI)
Alison Cassidy (BLM Law)
Maurece Hutchinson (JMK Solicitors/NI Coordinator of the Association of Personal Injury Solicitors)
Professor Grainne McKeever (Ulster University)
Dr Lucy Royal-Dawson (Ulster University)
Jim O'Callaghan (Housing Rights [Head of Operations])
Peter Luney (NICTS)
Stephen Martin (DoJ)
Kim Elliott (OLCJ)

Secretariat: Katharine McQuade (OLCJ)

1. The Chair welcomed everyone to the meeting and thanked the members for their attendance.

Apologies

2. Apologies were noted from John French (Consumer Council), Michael Murray (Institute of Directors), Janet Hunter (Housing Rights), Ursula O'Hare (The Law Centre) and Patrick Yu (NICRE).

Minutes of the Meeting 15th January 2019

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

Digitisation for & in court

4. Mr Luney advised members that NICTS had identified several pilot projects to test concepts and develop a range of new integrated on-line services. He

said that one of these was the 'Non-Contentious Probate End to End Solution' which aimed to produce a fully digital case file to be considered by the Master or Judge. He explained that while the business area in this instance is small it could be used to test a number of concepts which could be scaled upwards. Mr Luney said that NICTS was working to have a design available for testing early next year.

5. Mr Luney also explained that digitisation of cash handling and management procedures could help to divert non-essential footfall in court offices, and help to enhance facilities for those attending hearings. He said that existing online facilities were dated and NICTS was exploring how services such as stamps, fines and fees could be fully digitised. He recognised however that some customers had a preference for dealing in cash and advised that NICTS would also consider how functionality could be embedded in the community.
6. Mr Luney informed members that the roll-out of the new courtroom technology kit is currently underway and should be concluded by summer 2020. He said that so far the new kit has been deployed across 12 courtrooms and that this technology refresh would provide a more modern, resilient infrastructure. He explained that the kit depends on a new in-court Wi-Fi solution in order to realise some of the key benefits but this has been delayed due to the roll out of the new nigov network across the whole Civil Service. There was discussion surrounding the engagement of the judiciary with the new technology. Mr Luney confirmed that NICTS has been engaging with the Judicial IT Committee regarding the technology refresh. Mr Allamby suggested that it may be useful to contact Lord Michael Briggs (a Justice of the UK Supreme Court) and Andrea Coomber (Director of Justice¹) who recently addressed a Free Legal Advice Centres (FLAC) Access to Justice Conference in Dublin, keenly advocating for the utilisation of IT, and the judiciary may be receptive to their advice.
7. Mr O'Callaghan asked if the disparities which existed between the abilities of different age groups to access justice had been considered in the development of these online processes. Mr Luney confirmed that NICTS had engaged with a broad span of people and that customer journey maps had been produced and would be used for the first iteration of the service. Mr Kennerley queried if court users were engaged with the processes/forms being designed. Mr

¹ [Justice](#) is an all-party law reform and human rights organisation whose members are primarily from the legal profession.

Luney advised that, in respect of the probate pilot, NICTS were engaging with both existing and representative customers and would continue to work with them throughout the design process.

8. In relation to digitisation of court forms or online services, Mr Kennerley offered to assist with design of standard debt advice forms for use by those faced with debt claims. He explained that the Consumer Council were in the process of reviewing money judgments awarded against consumers for non-payment of debt and would be examining the obligations of credit providers to act sympathetically as per FCA guidelines. He suspected many of these awards were not contested by vulnerable consumers who felt under pressure and did not know where to seek advice. He advised that the Consumer Council would likely request figures from NICTS on uncontested judgments. Mr Martin suggested that it might be useful to liaise with Mr Kennerley on this subject.

Action: Mr Martin and Mr Kennerley to liaise regarding the Consumer Council review of money judgments.

Online Dispute Resolution (ODR)

9. Mr Luney informed members that the Strategic Oversight Group (SOG) which included the Lord Chief Justice, DoJ Permanent Secretary Peter May, NICTS Chief Executive Peter Luney, and the Justice Minister (when appointed), had revised the Courts Transformation Programme draft Vision Statement to refer more explicitly to the potential use of ADR/ODR/mediation in a number of different business areas. He said that work in this area had not progressed as it was dependent on legal aid funding considerations, and was not included in the 2019/2020 work programme but he considered that it would form a significant part of the vision going forward.
10. Mr Martin said that the DoJ is currently preparing a consultation paper on legal aid funding for intra-litigation mediation in the civil courts which it hoped to issue before the end of the year. He confirmed that the consultation paper would be shared with the Advisory Group. He explained that the challenge in this area is to create suitable incentives that will encourage parties to engage in mediation but discourage a subsequent return to litigation. There was some discussion about the British Columbia model with front-end using correspondence templates, and Mr Ross said he had spoken

to the Scottish Government to suggest they adopt the successful Road Traffic portal in England & Wales. Ms Cassidy queried whether it was envisaged that such incentives would be incorporated in the Rules of Court. Mr Martin advised that different options were being explored including protocols and Court Rules.

Out of court settlement of cases involving unrepresented minors

11. The Chair said that Judge Brownlie had raised a concern at the last meeting of the shadow Civil Justice Council (sCJC) that where cases involving unrepresented minors were settled out of court, funds may not be properly invested for the use and benefit of the minor. The Chair reported that the sCJC had agreed that a letter should issue to the Attorney General to see if his office might assist in raising public awareness in the absence of legislation. Ms Hutchinson explained that she had recently received updated statistics on the issue following a Freedom of Information request, which showed that in Northern Ireland in 2018 approximately 440 cases involving minors were registered with the Compensation Recovery Unit without legal representation. Mr McKendry advised that when statistics on this issue had previously been explored a contributory factor that had been highlighted was that compensators were at times failing to input the claimant representative's details, and asked for time to investigate if this was still an issue. Mr Ross advised members that the ABI code of practice is scheduled to be reviewed in 2020. The Chair suggested that the views of members would be beneficial and would assist Judge Brownlie in drafting the letter to the Attorney General.

Action: Ms Hutchinson to share FOI statistics with Mr Ross and Mr McKendry.

Action: Members to forward to the secretariat any views on the issue which may be of assistance to Judge Brownlie.

Litigants In Person (LIP)

12. Mr Martin said that the LIP Reference Group had met on three occasions under the chair of Sinéad Mulhern, a retired solicitor who has worked in both the statutory and voluntary sectors. He advised that while the primary focus of the group was on the family sphere, they were looking at improvements in court buildings, the role of McKenzie Friends, and training at more general levels. Mr Allamby confirmed that the group had conducted walk-around exercises in both Laganside and Dungannon Courts to look at ways of improving for example, signage, reception, waiting areas and other

information arrangements. He also said that the Group is organising a workshop with the legal profession and voluntary sector on working with distressed litigants in February 2020; and that a sub-group would examine the role of McKenzie friends and how their use might be regulated.

13. Professor McKeever advised that the LIP Reference Group had hoped a representative could be included as a member of the sCJC. The Chair advised that the request had been discussed at the last meeting of the sCJC which considered that it would not be appropriate at this time. Members felt that the majority of LIPs were single litigants and the Reference Group had been established as a forum where individual LIP views could be expressed and collectively fed back to the sCJC through existing members of the Council and the Advisory Group. She confirmed that a formal response would issue in due course.
14. Professor McKeever advised members that she had secured additional funding from the Nuffield Foundation for further research into the participative experiences of LIP. She explained that the research would bring together a disparate group of stakeholders to map the journey of LIP through the family courts and develop, and test, support materials. Professor McKeever asked Mr Luney to pass on any advice on customer journey mapping, and also suggested to Mr Kennerley that the Consumer Council may wish to be involved in the design process. Mr O'Callaghan suggested Grainne may wish to speak with RCJ managers who had carried out customer journey mapping on the Housing Rights Scheme, and Ms Sayers suggested there might be some read-across with the Law Centre's project to produce a guide for Industrial Tribunals. The Chair thanked members for these helpful suggestions.

NICTS Consultation

15. Mr Luney informed members that following the December 2018 consultation "Improving Cost Recovery in the Civil Courts", NICTS had received legal advice which cautioned that removing appeals from the scope of the Exemption and Remission Policy may be incompatible with Article 6 of the ECHR. Mr Luney said that the suggestion to remove appeals has therefore not been taken forward at this time, but that from 1st October 2019 NICTS introduced a small number of changes to the policy, including removing fee waivers for vexatious litigants.

Disability

16. Mr Luney advised that NICTS has finalized the membership of a sub-committee to produce an implementation plan in conjunction with the estates strategy. He said that he would like to convene a meeting of the sub-committee to look at both the estate issues and non-estate issues contained in the Civil Justice Report, following results of technical and functional surveys of all buildings in the court estate which should be completed by the end of the financial year. Mrs Kilpatrick advised that a judicial training workshop on 'Access to Justice for Deaf and Hearing Impaired People' was scheduled for November 2019, and any outputs would be shared with NICTS.

Clinical Negligence

17. The Chair explained that both the Bar Council and the Law Society objected to any system of accreditation which could effectively bar practitioners from undertaking clinical negligence work. She said that instead the Bar Council had proposed establishing an Advisory Committee to provide practical advice to practitioners, and the Law Society had re-constituted their Clinical Negligence Practitioners Group (CNPG). The Chair confirmed that Master McCorry had delivered training to practitioners and had also introduced a robust approach involving practical measures such as limiting the number of reviews in any case. The Chair advised that consideration of a mandatory approach has been deferred to allow the work of the above committees to bed in.

Alternative Dispute Resolution (ADR) and Mediation

18. Ms Cassidy queried whether there were any plans to develop the recommendation concerning compulsory mediation in low value claims. Mr Luney said there were no plans for the coming year, and explained that the approach is to focus on those recommendations that do not require legislative change, and to balance the investment against expected benefits given the small volume of cases involved. Mr O'Callaghan advised members that Housing Rights is about to launch a free dispute resolution service for 18-25 year olds which primarily deals with disputes in the private rental sector between landlords and tenants. Mr Kennerley suggested a discussion between Housing Rights and the Consumer Council which has an interest in this age group which were identified as a target for illegal money lending, which may be exacerbated by landlord demands.

Civil Hearing Centres

19. The Chair confirmed that the consultation on proposals to centralise county court civil business in four hearing centres - Laganside, Armagh, Omagh and

Coleraine - had closed on 31st May 2019 and that there had been general support for the concept. She informed members that it was hoped that the concept would be rolled-out on a pilot basis in the new year, in tandem with Equality and Rural Impact Assessments being progressed by NICTS. There was discussion surrounding public transportation issues to Coleraine courthouse. Mr Kennerley advised that he had close links with Transport NI and would be happy to feed back any particular concerns or suggestions to them on behalf of the group.

Key Priority Areas

20. The Chair reflected on the progress that had been made in the five priority areas since the sCJC was established almost two years ago. She invited members to consider what further areas should be prioritised for the sCJC to progress during the coming year in recognition that there were no Ministers or legislation, and to forward suggestions to the secretariat by the end of the month.

Action: Members to consider which new areas should be prioritised and submit suggestions before 31st October 2019.

Any Other Business

21. Mr Allamby queried what the current position was with the Media In Court Pilot being developed by the shadow Family Justice Board (sFJB). Mrs Elliott confirmed that the sFJB was due to meet on 10th October and she would provide Mr Allamby with a progress update following this meeting.

Action: Secretariat to provide update on Media In Court Pilot to Les Allamby following sFJB meeting on 10th October.

22. Mr Allamby asked when the sCJC was likely to move beyond shadow mode and if planning was in place to prepare for this. The Chair confirmed that the Council could not move beyond shadow mode in the absence of a Minister. Mr Martin explained that once a Minister is appointed the plan is, subject to Ministerial approval, to seek to move sCJC and sFJB toward a statutory footing and that DoJ are also pushing for greater recognition of Civil and Family Justice within Programme for Government (PfG).
23. Professor McKeever suggested that a disability representative should be invited to join the membership of the Advisory Group. The Chair agreed that this would be appropriate.

Action: Secretariat to seek a nomination for a disability representative to participate in the Advisory Group.

Next Meeting

24. The Chair advised that the next meeting would take place following the next sCJC meeting in either February or March 2020 and that members would be informed of the date in due course.