

## SHADOW CIVIL JUSTICE COUNCIL ADVISORY GROUP

**Minutes of the Third Meeting of the shadow Civil Justice Council (sCJC) Advisory Group held on 2<sup>nd</sup> December 2020 at 4.00pm via Webex video conferencing.**

Attendees: Mandy Kilpatrick (Chair, PPS to LCJ)  
Peter Luney (NICTS)  
Stephen Martin (DoJ)  
Glenn McKendry (NFU Mutual/ ABI)  
Scott Kennerley (The Consumer Council)  
Michael Murray (Institute of Directors)  
Les Allamby (NIHRC)  
Alastair Ross (ABI)  
Alison Cassidy ( DAC Beachcroft)  
Maurece Hutchinson (JMK Solicitors/NI Coordinator of the Association of Personal Injury Solicitors)  
Professor Grainne McKeever (Ulster University)  
Dr Lucy Royal-Dawson (Ulster University)  
Janet Hunter (Housing Rights)  
Kim Elliott (OLCJ)

Secretariat: Katharine McQuade (OLCJ)

1. The Chair welcomed everyone to the meeting and thanked the members for their attendance, noting the delay due to Covid-19.

### Apologies

2. Apologies were received (after the meeting) from Ursula O'Hare (Law Centre).

### Minutes of the Meeting 8<sup>th</sup> October 2019 and April 2020 written update

3. The minutes of the last meeting were agreed via correspondence and have been published. The Chair noted that a written update on matters reported by members had been circulated on 7<sup>th</sup> April following the postponement of the planned summer meeting due to Covid-19 restrictions.

### Covid-19: Business continuity and recovery

4. The Chair said that the Lord Chief Justice (LCJ) had quickly moved to issue a range of business continuity guidance in the early stages of the Covid-19 crisis and had worked closely with the Northern Ireland Courts and Tribunals

Service (NICTS) to manage the impact of the pandemic upon the court system. She explained that Mrs Elliott had produced guidance and forms specifically for LIP and that the HR1 form had been developed to make provision for any party to request that a matter be placed before a judge for consideration. The Chair acknowledged that the recovery of civil business had not moved as quickly as hoped and advised that the LCJ had offered additional hearing dates in the High Court to assist with the recovery of business in this area.

5. Mr Luney informed members that in the immediate aftermath business had initially been consolidated into four court hubs which continued to facilitate urgent business in accordance with the Lord Chief Justice's directions. Since then NICTS has taken forward a huge programme of work to safely reopen buildings ensuring they are 'Covid-secure'. Mr Luney reported that 57 courtrooms are now operational and that technology has been rolled out across the court estate to allow more business to be dealt with remotely, through either virtual or hybrid hearings. Measures are also in place to safely accommodate physical hearings where required.
6. Mr Luney advised that NICTS is tracking the backlog of cases that has accumulated due to the pandemic but explained that the nature of civil and family business does not easily lend itself to this type of statistical analysis. By way of proxy the NICTS statisticians are tracking both the number of cases received and the number of cases disposed of in these business areas. The number of cases lodged is currently still 42% lower than pre Covid-19 figures and the disposal rate is currently 0.7 - the comparative figure for last year being 0.9.
7. Mr Luney also said that, as requested by the LCJ, NICTS is urgently exploring the use of external, or 'nightingale', venues to supplement the reduced capacity in the court estate and that the Waterfront Hall/ ICC in Belfast was the principal venue under consideration. NICTS is seeking to use nightingale venues in a number of different ways e.g. to facilitate consultations and to provide 'staging' areas in order to control the footfall into courthouses. These venues may also add extra capacity for jurors, allowing courts currently being used as juror rooms to be returned to use as Crown Courts. Mr Luney explained that the third floor of the Waterfront Hall offers three large hearing rooms which can each be divided into two and that the intention would be to purpose these for coronial and tribunal business. Once tested, these venues may also offer additional capacity for dealing with appropriate civil and family court business.

8. Mr Luney also advised that NICTS is working with NICS HR regarding the supply of staff required to support the ongoing work regarding the court estate and to service the nightingale venues when they come on stream. He explained that the progress of the recovery plans was very much contingent upon the availability of staff.
9. The Chair observed that, due to Covid-19 contingency, Belfast county court civil work is currently being dealt with at Downpatrick but confirmed that the intention is to return to dealing with all business in its usual venue as these become available. The Chair also reported that efforts were being made in the civil hearing centre at Armagh to restore previous administration practices in regard to civil business. The resumption of small claims was very much on the agenda.
10. Ms Hutchinson observed that from the perspective of the legal professions a large amount of work had been processed in the past month through both remote and hybrid hearings and congratulated NICTS on the efforts made to date to accomplish this. She also said that the HR1 form had been transformative for the professions. She queried if more notice could be given to the professions regarding the scheduling of Sightlink hearings before the High Court as time was often required to make appropriate arrangements with clients. This was not such an issue in county court hearings. The Chair advised that the intention was for Sightlink licenses to be associated with specific courts for continuity and ease of scheduling, and undertook to follow this up. Ms Hutchinson suggested that difficulties principally arise when the judiciary relocate to different courtrooms at short notice. She also highlighted differing practices regarding trial bundles, with some judges requesting parties to lodge physical bundles and others requesting electronic bundles. Mr Luney undertook to look into this issue offline.

**Action: The Chair to make enquiries regarding notice arrangements for High Court Sightlink hearings.**

11. Mr Ross informed members that the Association of British Insurers (ABI) and the Association of Personal Injury Lawyers (APIL) had agreed [a Protocol](#) in April 2020 suspending limitation as a defence for the duration of the Protocol. He confirmed that the Protocol was ended by mutual agreement in August. Mr Ross said that if members wished to raise any other measures that they considered might be helpful he would be happy to discuss.
12. Mr Allamby queried whether there was any sense yet as to how the experience of the pandemic and the business continuity measures might affect how court business is conducted in future. The Chair said that there was

great enthusiasm amongst the judiciary to continue to make use of the technology now available where appropriate to do so, such as case management issues which might be dealt with administratively or remotely, freeing up court time for hearings. Mr Luney said that NICTS will wish to build on the investment made in technology to date and that it would be a feature of the court system going forward. He advised that NICTS is currently exploring how to use electronic bundles more effectively, both in terms of electronic service and sharing documents in a courtroom scenario. Work is being taken forward with a provider to develop a proof of concept in this area. Mr Luney also reported that NICTS plans to appoint a Chief Modernisation Officer early in the New Year to give focus to this area.

13. Ms Cassidy echoed Ms Hutchinson's comments regarding the profession's appreciation of the efforts to facilitate business continuity and recovery. In terms of moving forward she suggested that wider promotion of the NICTS Sightlink test service would be helpful, particularly for clients who might be connecting to Sightlink from home. Ms Cassidy also commented that the Sightlink model works exceptionally well for reviews and quantum only matters in the county court, and that hybrid hearings would be the preference for other matters moving forward.
14. Professor McKeever advised that Ulster University had recently conducted a rapid consultation on the impact of Covid-19 on family justice in Northern Ireland and that similar issues are being picked up in the responses to the consultation.

#### Litigants in Person (LIP)

15. Mr Martin updated members on the work of the LIP Reference Group which, under the leadership of Sinead Mulhern, had been working prior to the pandemic to identify practical steps to make the court process easier for LIP and to find ways of building a greater mutual understanding. This work included visits to court buildings to identify navigation difficulties and suggest possible solutions to NICTS. He informed members that the sponsors of the LIP Reference Group had also 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 10<sup>th</sup> - 11<sup>th</sup> February 2020 which was well attended and reported to be beneficial.
16. Professor McKeever advised that members of the Reference Group have been working with the University of Ulster to develop tools to support LIP and that the focus of this work has been on family law. She explained that they have been liaising with a wide range of stakeholders and are approaching the

issue from a user-centred perspective. Two projects have been identified to be developed into prototypes in the New Year. The first of these is a 'checklist' of legal participation and the second is the creation of a website of information, including an online navigation tool to guide litigants to the relevant part of the legal process. Professor McKeever said that work had stalled due to the pandemic but that researchers would soon be seeking to observe court hearings through a variety of means e.g. remote/hybrid/in person.

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

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

17. Ms Hutchinson reported that since the last meeting of the Advisory Group meetings had taken place between Mr Justice McAlinden, District Judge Brownlie, Alastair Ross, Glenn McKendry and herself and she understood that the sCJC had subsequently agreed to press for legislative intervention and that Laurene McAlpine from the Department of Justice (DoJ) was to report back to the group regarding the Department's plans to progress the issue. Mr Martin confirmed that he had received an update from Ms McAlpine advising that (i) work was underway on a draft consultation paper and (ii) that DoJ colleagues had been liaising with both ABI and the Department of Communities (DoC) to analyse the statistical information available and were not convinced that significant numbers of cases were being affected. He further advised that DoJ was keen to explore the issue with stakeholders prior to consultation and that a timeline for the consultation process had not yet been established.
  
18. Mr Ross confirmed that he had attended the meetings at which the judicial representatives had made it clear that they were keen for the issue to be addressed pending any legislative change. ABI had altered the wording of their guidance in this respect however the judicial representatives felt this was not sufficient to protect the interests of minors. Mr Ross emphasised that there was a distinction to be drawn between cases which are initially registered without legal representation and cases which actually settle without legal representation which is not apparent in the statistics. He said that ABI had written to the sCJC Chair during the summer to provide reassurance that the ABI member firms listed in the correspondence would make every effort not to settle claims with unrepresented minors in Northern Ireland. He explained however that as a trade body ABI is not a regulator and has no power to compel and that the issue would ultimately require a legislative solution. Mrs Elliott confirmed that this letter had been shared with sCJC members. Mr Ross thought that DoJ intended to address the issue under

the forthcoming Miscellaneous Provisions Bill. Mr Martin considered that it was unlikely that there would be capacity within this Bill.

19. Ms Hutchinson asked if Mr Ross could share the ABI statistics provided to DoJ. Mr Ross said that the work had been commissioned by DoJ so he would need to seek the Department's consent in the first instance. Ms Hutchinson opined that if the practice (of settling cases without legal representation) was not occurring the ABI would not need guidance in place to address the issue. Mr Ross and McKendry both disagreed with this assertion. Mr McKendry clarified that the guidance exists in respect of all captured claims to instil good practice rather to address a perceived problem.

#### *Pre-Action Protocols (PAPs)*

20. Mrs Elliott reminded members that the sCJC's priority areas had been refreshed at the meeting on 11<sup>th</sup> March 2020 and that the new priority areas agreed were: '**The County Court and Small Claims Court**', '**The overriding objective: an efficient and timely process**', and '**Alternative Dispute Resolution and Mediation**'. She explained that 'The overriding objective: an efficient and timely process' contained an overarching recommendation to review PAPs and that the sCJC had established a sub-committee to progress this work with support from the Office of the Lord Chief Justice (OLCJ). The sCJC had agreed that, while prioritising PAPs would be a matter for the sub-committee, it may be sensible to focus initially on the progression of the PAPs in the following areas: Clinical Negligence (*subject to the content of the new CNPG protocol*), Personal Injury Claims, Professional Negligence (beyond Commercial cases) and Defamation. Mrs Elliott said that the sCJC was also conscious that the Civil Justice Council in England & Wales is also currently conducting a review of PAPs which would remain open until 18 December 2020, and their findings may be of interest to the sub-committee.
21. Ms Hutchinson and Mr McKendry both expressed an interest in assisting with the work of the sub-committee. Mrs Elliott thanked them for their interest and agreed to feed this back to the Chair.

**Action: Mrs Elliott to advise the sub-committee Chair of the Advisory Group members' interest in the PAP work and willingness to assist.**

## *Review of Practice Directions*

22. Mrs Elliott reported that work was being taken forward to draw up a composite list of practice directions in accordance with CJ27. She confirmed that all Practice directions since 2006 are available to the profession and others externally on the [JudiciaryNI](#) website, but not all are 'live'. The Judges' Reference Library is working with the OLCJ Legal Team to establish an authoritative list of valid practice directions however due to the impact of the pandemic on staff resources work has not progressed in this area as quickly as hoped. Mrs Elliott undertook to provide a further update at the next meeting. She asked members to contact the secretariat if they identified any practice directions on the website which were obsolete. The standard process going forward would be to ensure that all practice directions are appropriately indexed and made available online. Professor McKeever highlighted that LIP would need to be signposted to this resource and would also require assistance in identifying which practice direction was applicable to their litigation.

## Alternative Dispute Resolution and Mediation

### *DoJ consultation on funding for intra-litigation mediation*

23. Mr Martin informed members that the policy surrounding funding for intra-litigation mediation was being finalised and that the Department hoped to go out to consultation with key stakeholders early in 2021. He said that the proposals would be shared with the Advisory Group.

## The County Court and Small Claims Court

### *County Court financial jurisdiction consultation paper*

24. Mr Martin advised that the consultation paper was expected to issue in the New Year and that the proposals would be shared with the Advisory Group.

## *Civil Hearing Centres*

25. Mrs Elliott explained that at the beginning of this year NICTS, OLCJ and the judiciary had been working to formalise the hearing centre in Armagh and take forward plans to develop a second hearing centre in Belfast. Progress ran into difficulties with courtroom availability, and then Covid-19. The court estate has now been reconfigured due to the pandemic and County Court civil business is being managed (mostly remotely) out of four venues. Lessons

will be learned from this going forward and will inform any future progression of the Civil Hearing Centre plans.

### Digitisation

#### *Consumer Council review of money judgments*

26. Mr Martin confirmed that he had liaised with Mr Kennerley regarding the Consumer Council review of money judgments and they had agreed to keep in touch on the issue.

#### *Judicial Digitisation Steering Group*

27. The Chair reported that the LCJ had asked Mr Justice Horner to work with colleagues in the Court of Judicature, along with representatives of the other judicial tiers, to explore options for short and long term requirements for modernising courts. Discussions will be held with the profession and relevant stakeholders and the group will aim to establish a cohesive position from the judicial perspective and to clearly articulate judicial expectations of technology. Mr Justice Horner will report back to the LCJ in April/May 2021. Mrs Elliott advised that demonstrations of different systems are being arranged for the group which includes John Keers from the Ulster University School of Law and Catriona Gibson from the Law Society as members.

#### *Courtroom Technology*

28. Mr Luney explained that the NICTS digital blueprint offers three levels of courtroom technology and that more courts are now being pitched at higher levels due to the move towards remote working. He advised that a separate issue will be the integration of electronic bundles with an online case management system.

### Online Dispute Resolution (ODR)

29. The Chair noted that further progress in this area was subject to the appointment of the NICTS Chief Modernisation Officer.

### Disability

#### *Disability representative*

30. It was agreed at the previous meeting that the secretariat should seek a nomination for a disability representative to participate in the Advisory

Group. The Chair confirmed that an approach was made to Disability Action who nominated their Head of Policy, Patrick Malone, to join the Advisory Group. Mr Malone was not in attendance today.

#### *NICTS Disability Sub-committee*

31. Mr Luney advised that NICTS will wish to take forward the creation of a Disability sub-committee in tandem with developing the estates strategy and that this work will be picked up again in the aftermath of the pandemic.

#### *Hearing Impaired Litigants*

32. The Chair reported that the Law Society has formed a working group known as Legally Able and issues for members of the deaf community will be one of the areas that will be examined. She reported that the group has been paused since mid-March due to the pandemic and the resultant number of solicitors on furlough however they have had initial discussions with the British Deaf Association, and plan to arrange a remote meeting with all members. The group will be liaising with NICTS and an update will be provided to the sCJC.

#### Clinical Negligence

33. The Chair explained that, due to the Covid-19 pandemic it has not been possible to continue monitoring performance at Masters' reviews to see if any improvement of standards has resulted from the work of the Law Society's Clinical Negligence Practitioner's Group (CNPG). She said that the CNPG, working along with the Queen's Bench Judge, Master McCorry and the Clinical Negligence Liaison Committee has also been engaged in developing a new protocol which aims to improve professional standards. The Chair confirmed that the document will be shared with this group when issued.

#### Discount rates – personal injuries

34. Mr Martin informed members that DoJ hopes to introduce a discount rate Bill in the Assembly in February 2021 and that the Minister is seeking accelerated passage – an approach which has been questioned by the Justice Committee. He understood that the timetable for setting the rate will depend upon whether accelerated passage is approved. The Chair reported that from the judicial perspective the setting of the discount rate is considered a priority and any delay would be extremely disappointing.

35. Mr Ross advised that while the ABI preference would be to adopt the England & Wales model for the setting of the rate, as opposed to the Scottish model, the priority was to see the Bill brought forward. Ms Cassidy reported that the delay in setting the discount rate is causing frustration amongst practitioners and queried whether the judiciary had given consideration to exercising their discretion in this area. The Chair could not comment but hoped that the necessary legislation would be progressed urgently.

### Any Other Business

#### *Community Justice Fund*

36. Mr Allamby explained that the Community Justice Fund is an initiative of the Access to Justice Foundation which seeks to raise money to support access to justice. An agreement had been made with the Foundation that any donations raised from Northern Ireland would be distributed in Northern Ireland. Ms Hunter reported that Housing Rights (HR) had received a grant from the Community Justice Fund and that in addition to funds they also offer support regarding building leadership and capacity.
37. Ms Hunter informed members that for the last 9-10 months HR had been running a scheme for mediation in private tenancies to resolve disputes outside of court. She observed that during the initial stages of the pandemic, when only urgent court business was being processed, there had been an appetite amongst tenants to engage with the service. She considered that this interest may start to wane as more traditional means of mediation become available again. Ms Hunter also said that HR was considering whether there was a way in which parties could be requested to engage in some form of mediation before coming to court. The Chair advised that work was being taken forward with DoC to see where mediation might be introduced and to build on relationships established with NICTS and other Departments.

#### *Miscellaneous Provisions Bill*

38. Mr Ross queried if any recommendations from the Civil and Family Justice Review (the 'Review') would be addressed in the Miscellaneous Provisions Bill, in particular the placing of the shadow Civil Justice Council on a statutory footing. Mr Martin said that the Bill was already heavily loaded and did not touch on the recommendations of the Review but he could advise that discussions are to be held over the coming weeks regarding Civil and Family Justice, and announcements in this respect by the Minister might be anticipated in the first quarter of the New Year. Mr Ross asked if Mr Martin could give any indication as to where the Review sat in the Department's list

of priorities. Mr Martin considered that the Minister will wish to do something tangible by the end of the mandate in March 2022. The Chair advised that the LCJ is keen to progress the Review's recommendations further.

39. Mr Ross informed members that he had met with NICTS in February to discuss the road traffic accident claims portal in E&W as an example of a model that could be taken forward in this jurisdiction. The portal handles claims up to a value of £25,000. Mr Ross said that he would be happy to put together a presentation on the model for the benefit of the Advisory Group. Ms Hutchinson suggested that a plaintiff representative should also participate in the discussions with NICTS for balance. Mr Luney confirmed that this would be the case.

**Action: Secretariat to liaise with Mr Ross regarding a presentation to the Advisory Group on the road traffic accident claims portal in E&W.**

#### *Media In Court Pilot*

40. Professor McKeever queried if there had been any further developments regarding the Media In Court Pilot. Mrs Elliott said that unfortunately the shadow Family Justice Board (sFJB) decided that the pilot could not be extended beyond the inherent jurisdiction of the court without changes to the Court Rules. She advised that the matter had been referred to DoJ to consider taking forward substantively the legislative changes required but they had advised it was not a priority at this time. Mrs Elliott confirmed that the new Chair, Mrs Justice Keegan, was still keen to facilitate media access and the matter was still on the radar of the sFJB.

#### Next Meeting

41. The Chair thanked everyone for attending the meeting remotely, and advised that the next meeting would be arranged to follow the meeting of the substantive sCJC early in the New Year. The arrangements would be confirmed with members in advance.