

SHADOW CIVIL JUSTICE COUNCIL

Minutes of the Twelfth Meeting of the shadow, Civil Justice Council held on 10th March 2022 at 4.15 pm via WebEx video conferencing.

Attendees: Mr Justice McAlinden (Chair)
District Judge Duncan
Master McCorry
Mandy Kilpatrick (LCJO)
Paul Andrews (LSA)
Liam McCollum QC (Bar Council)
Elaine Topping (NICTS)
Laurene McAlpine (DoJ)
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 Mark Goodfellow and Karen Ward.

Previous minutes – shadow Council meeting on 9th December 2021

2. The minutes of the last meeting were agreed and will be published in due course.

Covid-19: Business Continuity & Recovery

3. 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 23 February 2022. The guidance sets out that Judges will continue to only require legal representatives and those involved in proceedings to attend in person where it is directed by the Judge. Social distancing continues unless there are mitigations in place and it is anticipated that going forward "hybrid" arrangements will continue to be used.
4. Mrs Kilpatrick advised that in order to ensure the benefits of using technology are built upon the Lady Chief Justice is developing guidance, in consultation with the judiciary and practitioners, to assist in promoting consistency and predictability of approach to the question of remote or in-person attendance.

5. Mrs Topping provided an update on behalf of NICTS and advised that the ventilation across the NICTS estate is currently being assessed so that when footfall can be increased it can be done so safely. Mrs Topping advised that there are now 72 SightLink licences and 20 WebEx licences in operation across the court estate to facilitate remote and hybrid court and tribunal hearings. SightLink usage has increased from an average of 100 instances per month in January 2020 to 75,000 per month at the end of January 2022. The emergency “livelinks” powers have been extended until September 2022. Mrs Topping also confirmed that work was underway to review the signage currently in place in preparation for when footfall can be increased.
6. The Chair asked members if they had any comments to make. Mr Fitzpatrick noted the challenges that had been faced and noted that a lot had been learnt from the past two years which would assist the court process in becoming more efficient. Mr Fitzpatrick noted that there is an eagerness to return to a more normal environment and hoped that it will be possible to secure an in-person hearing if required and that a way of combining the hybrid approach with past arrangements will be possible.
7. The Chair advised that it would not be sustainable to continue to ask witnesses to attend hearings from long distances and the lessons learnt over the past two years should not be forgotten. The Chair also advised that use of the Great Hall for consultations to take place should be considered and the number of cases being heard each day should be reviewed in tandem with staff resources and increased if possible. The Chair also noted the concern that the live link powers may be lost if there is no Executive in place.

Alternative Dispute Resolution

8. Mrs McAlpine updated members that development work is ongoing on the Online Dispute Resolution pilot. Consumer Code for Online Dispute Resolution (CCODR), the commercial consortium leading the project, is progressing work in the hope that it can secure financial support from a super user of the small claims court such as a bank or credit union in the interests of building evidence to reduce expenditure in the longer term. The Department is supporting engagement and working to support development of the evaluation. The Department will provide further updates as work progresses. The Chair noted that there is some hesitation as the pilot brings an extra layer of costs.
9. Mrs McAlpine advised that following the consultation last year on a General Authority for intra-court mediation in non-family civil cases, a pilot was

launched on 14 February. Mr Andrews advised that requests have been received and will keep members updated. The Chair advised that he would be keen to see how it progresses and noted that most mediation takes place in high value commercial cases.

The County Court and Small Claims Court

10. Mrs McAlpine updated members that the Minister is formally consulting the Lady Chief Justice on increasing the small claims jurisdiction. Subject to the consultation and business case approval the Department hopes to make Statutory Rules effecting the increase for some time later this year, possibly September or October.

Personal Injury Discount Rate

11. Mrs McAlpine updated members that the Damages (Return on Investment) Bill received Royal Assent and was enacted on the 2 February 2022. Sections 1 and 2 and the Schedule to the [Act](#) will be commenced on the 10 February 2022. A report from the Government Actuary is expected week commencing 14th March 2022. The Chair welcomed this update and Mr Fitzpatrick acknowledged that the Department should be commended for their efforts in overseeing the enactment of this legislation.

Litigants in person (LIP)

12. Mrs McAlpine advised that work on the tools developed by the University of Ulster with funding from the Nuffield Foundation for LiPs in family proceedings is nearing conclusion. A pathfinder tool, which will supplement the website providing a repository of information launched last year, is in the process of final tests and should be launched in coming months. The Department is now in discussions with the University of Ulster on options for future funding when the Nuffield funding ends in July 2022. The Chair noted that two family judges had agreed to allow researchers to approach them directly to discuss how they might access the family proceedings courts.
13. The Chair also updated members on the work of the LiP reference group. The use of McKenzie friends and a perceived reluctance to accept them had been raised at the last meeting of the group. The High Court Bench had also observed that some unsuitable persons had come forward as McKenzie friends and wanted to explore how this could be mitigated. The Chair advised that the forms a McKenzie friend is required to complete are currently being reviewed and consideration is being given as to whether a detailed introduction on roles should take place at the start of the hearing.

The Chair confirmed any changes proposed would go out for consultation. Mr McCollum suggested a detailed introduction to explain roles at the start of a hearing would take up valuable court time.

14. Mrs Topping advised that the Department and NICTS are currently doing some work with the University to create short videos which would include a description of who is who in the courtroom.

The overriding objective: an efficient and timely process

Out of court settlement of cases involving unrepresented minors

15. Mrs McAlpine advised that 54 responses to the consultation were received and the Department published their response to the consultation in January 2022. The report notes that the current mandate of the Northern Ireland Assembly is due to end and a new Assembly will be elected in May. The current Minister believes that legislative intervention would be appropriate in light of the consultation responses, but notes that any decision will fall to a new Minister of Justice and a new Assembly.
16. The report also noted that primary legislation would be required to compel court approval in all cases and also that that primary legislation is not required to uphold the principle that unapproved minor settlements are not enforceable.
17. The Chair noted there is a pending Judicial Review in which the Applicant seeks to challenge the MIB Motor Insurers Bureau procedure which has been adjourned for hearing.

Pre-Action Protocols (PAPs)

18. Master McCorry provided an update on the work of the sub-committee. He advised a working group has been set up to commence the drafting of PAPs in the following areas:

Clinical Negligence Pre-Action Protocol

19. Master McCorry advised that the Protocol for Clinical Negligence Litigation in the High Court and Practice Direction for Experts issued on 29 September 2021 (Practice Direction 2/21). At the meeting of the Sub-Committee on the 14 February 2022 it was agreed that a working group would be set up under the direction of HHJ Devlin to begin work on a draft PAP for County Court cases.

Defamation Pre-Action Protocol

20. Master McCorry advised that the draft had issued for targeted consultation. The consultation closed on the 7 March 2022 and responses have been shared

with members. It was agreed that a meeting of the sub-committee would be convened after the Final Stage of the Defamation Bill to consider the responses received and any amendments that may be required. .

Defamation Bill

21. Mr Foster updated members that the Committee has now published its Report on the Defamation Bill. The report advised that the Committee voted against Clause 11 Trial without Jury. The Committee also voted in favour of a new amendment Clause 10A; *A judge may order plaintiffs and defendants to engage in Alternative Dispute Resolution before commencement of a trial.* Consideration Stage of the Bill took place on 2 March 2022 and some changes were made to the Bill resulting in a lot of substantive provisions being removed; Clause 1 – serious harm, Clause 5 – which would have provided a defence for website operators, Clause 8 – single publication rule, Clause 10 – Actions against persons who are not the author, editor etc. Clause 11 the removal of the presumption of trial by jury has remained. Mr Foster advised that the Bill now stands referred to the Speaker, further Consideration Stage will take place on the 14 March, and Final Stage is scheduled to take place on the 22 March 2022.

Credit Hire Protocol

22. Master McCorry updated members that a working group has been set up under the direction of District Judge Duncan to begin work on a draft protocol.

Personal Injury and Damage Only Road Traffic Accident Pre-Action Protocol

23. Master McCorry advised that a draft Pre-Action Protocol has been drafted by the working group and has been shared with members in advance of today's meeting. Members discussed the draft and agreed that the draft should issue for consultation.

Commercial Actions Pre-Action Protocol

24. Master McCorry advised that a draft Pre-Action Protocol has been drafted by the working group and has been shared with members in advance of today's meeting. Members discussed the draft and agreed that the draft should issue for consultation.

Ejectment Proceedings Pre-Action Protocol

25. Master McCorry advised that a draft Pre-Action Protocol has been drafted by the working group and has been shared with members in advance of today's meeting. Members discussed the draft and agreed that the draft should issue for consultation.

26. The Chair extended his thanks to HHJ Devlin and to Master McCorry and his groups for making remarkable progress in progressing the Protocols.

Action: Secretariat to arrange meeting of Sub-Committee on Pre-Action Protocols to discuss the draft Defamation, Media and Communication Claims PAP.

Action: Secretariat to arrange for the draft Commercial Actions PAP, Ejectment Proceedings PAP and Personal Injury and damage only Road Traffic Accident PAP to issue for consultation.

Digitisation for & in court

Digital Strategy

27. Mrs Topping updated members that the NICTS Digital Strategy was published on 17 January 2022 with the NICTS ICT Strategy published internally on the same date. Mrs Topping confirmed that the upgrade of the new courtroom technology is continuing with 56 courtrooms now complete and the remaining 13 courtrooms to be upgraded by August 2022. Wi-Fi is now available in all courtrooms.

28. Mrs Topping advised that the Probate Online Portal continues to receive positive feedback from the public, solicitors and staff. As of 18th February, 1,116 applications have commenced on the portal (275 citizen and 841 solicitor) and 1055 grants have been issued (256 citizen and 799 solicitor). Business Handover and Project closure which will include any lessons learned reporting is planned for March 2022. Mrs Topping confirmed that work is beginning in respect of online solutions for Licencing applications and Jury Service which at the moment are very paper based.

Judicial Digitisation Steering Group

29. Mrs McMurray updated members that the Judicial Digitisation Steering Group (JDSG) was pleased to note that the Vision 2030 Digital Strategy reflected the priorities in the Judicial Modernisation Paper and representatives will continue to work with the NICTS and DOJ to help inform and develop the digital priorities to help achieve the joint vision. This work will build on the good progress made with remote hearings, and re-designed case management processes, which started as contingency procedures during the pandemic, and will reflect the recommendations of the civil and family justice and other reviews. Mrs McMurray advised the Probate Portal is a successful example of how future processes might look, and the revised practice direction for the Commercial Hub takes a further step towards paper light courts, with a new case information form to be completed collaboratively and uploaded into BOX, and greater use of administrative case management and hybrid hearings. Some smaller projects are underway to

replace and modernise existing IT systems such as the Office of Care and Protection, the Official Solicitors Office, Planning Appeals Commission and Water Appeals Commission and the Parole Commissioners. Wider scale change will require a new 'Future Core Solution' to be developed incrementally over the next number of years, the timing of which is subject to securing the necessary funding and resource, Mrs McMurray confirmed regular updates will be provided.

Electronic court bundles

30. Mrs McMurray updated members on the first two phases of the e-bundles pilot in the High Court. Using the Bar's OBBS service and Bundlesdocs, proved largely positive, and any lessons learned are being taken forward by LCJO and NICTS. The next phase of the pilot is to test Caselines, and a pilot hearing is listed on the 29th March. Mrs McMurray advised the profession have been encouraged to continue using e-bundles in appropriate cases beyond the pilot where practice directions permit e-bundles to be lodged and with the permission of the court.
31. Mrs McMurray advised that LCJO has issued a short targeted consultation on a draft practice direction which will aim to standardise the submission and format of e-bundles received regardless of source to include the requirements of the judges using these, such as pagination and hyperlinks, ability to annotate and highlight etc. The directions will deal with how a permitted e-bundle should be structured and lodged with the court, and will be equally applicable to the provision of e-bundles by litigants in person. It will not specify any software packages for preparing the e-bundle which may be as simple as a PDF version of a bundle created on Word or a number of free packages available for occasional users. Mrs McMurray advised the consultation was due to close on 23 February 22, however extra time to respond was requested by one organisation which was granted until the 4 March 2022, responses will then be collated and considered.
32. Mrs McMurray advised that NICTS are exploring options for the secure storage of e-bundles, which will include a review of retention and disposal schedules for electronic documents. There are therefore no plans to extend the use of e-bundles beyond the High Court at this stage.

Disability

33. Mrs Topping advised that potential dates for a meeting between NICTS and Sheila McGivern from the Legally Able Group have been offered and it is hoped a meeting will take place in the near future.

AOB

Domestic Abuse training e-learning

34. Mrs McMurray updated members on the online training package which has been developed by the DoJ and is targeted towards those who may come into contact with a victim, or abuser, during the course of their duties, in light of the Domestic Abuse and Civil Proceedings Act (Northern Ireland) 2021 which came into force in February. An eLearning package has also been developed in partnership with subject experts from Carafriend/HERE NI, Rainbow, Men's Advisory Project, NSPCC and Women's Aid Federation NI and is now available on the Centre of Applied Learning LINKS website. It is hoped that the package may also be rolled out to other key organisations who do not have access to LINKS such as the Health and Social Care Trusts, the Probation Board, the education sector, the Bar and the Law Society. Further information is also available on the NI Direct Website [here](#).

Judicial Review Recommendations

35. Mrs McMurray referred members to the report that had been shared in respect of the Judicial Review recommendations contained within the Civil Justice Report. The Chair confirmed with members that they were content the recommendations had been fully addressed and it was agreed they could be formally closed off.
36. The Chair also noted the change to the Permanent Secretary role and asked that the Councils' thanks be recorded to Peter May for all his efforts in the Department of Justice and to wish him well in his new post.

Date of next meeting

37. The date of the next meeting is **Thursday 8th September 2022 at 4:15pm.**