

SHADOW CIVIL JUSTICE COUNCIL ADVISORY GROUP

Minutes of the Sixth Meeting of the shadow Civil Justice Council (sCJC) Advisory Group held on 29th September 2022 at 4.00pm via WebEx video conferencing.

Attendees: Mandy Kilpatrick (Chair, PPS to LCJ)
Karen Ward (NICTS)
Steven Allison (DoJ)
Glenn McKendry (NFU Mutual/ ABI)
Htaik Win (NIHRC)
Alastair Ross (ABI)
Professor McKeever (UU)
Dr Lucy Royal-Dawson (UU)
Maurece Hutchinson (JMK Solicitors/NI Coordinator of the Association of Personal Injury Solicitors)
Janet Hunter (Housing Rights)
Nuala Toman (Disability Action)
Julie McMurray (LCJO)

Secretariat: Catherine Di Maio (LCJO)

1. The Chair welcomed everyone to the meeting and thanked them for attending. She noted that briefings from each work area had been provided to members prior to the meeting and explained that she would invite them to comment or discuss, if they wished, after each agenda item.

Apologies

2. Apologies were received from Patrick Yu, Ursula O'Hare and Alison Cassidy.

Minutes of the Meeting 24th March 2022

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

Covid-19: Business continuity and recovery

4. Mrs Kilpatrick updated members that the Lady Chief Justice's Office issued updated guidance on the Judiciary NI website on 22 June 2022. Whilst social distancing has been reduced to 1 metre, pressures on accommodation remain. Current data for civil business shows distinct signs of recovery, provisional figures for April to June 2022 are available on the [Northern Ireland Court and Tribunals Service Quarterly Provisional Figures - April to June 2022 \(justice-ni.gov.uk\)](https://www.justice-ni.gov.uk). Mrs Kilpatrick advised that Belfast continues to experience backlogs due to volumes being up to pre covid levels. It has been agreed that

court 7 could be assigned to an additional civil court on Mondays up until the Michaelmas Term and will remain under review whilst considering progression of recovery and priority business. The County Court and District Judges sat a total of 1,254 days. In terms of cases 45 equity, 149 ejectment, 2,104 small claims and one criminal damage case were received; 37 equity, 127 ejectment, 1,623 small claims and 3 criminal damage cases were disposed. The figures show that there was a general increase in the number of cases received and disposed across most business areas and a general decrease in time taken to disposal compared with figures for the same quarter in the previous year. The decrease in the average time from issue to disposal of small claims cases is due to the resumption of cases being dealt with in the courts. Mrs Kilpatrick advised that in the High Court there were 573 sitting days during the quarter, the highest proportion of which was spent on both Bails and Queen's Bench business (15%). Queen's Bench business included, 1,047 writs and originating summonses received, 532 were disposed, 67 applications for leave to apply for Judicial Review, 27 applications for Judicial Review and no ancillary applications were received. Chancery Division business included receipt of 295 applications, 71% which were Chancery, 15% bankruptcy and 14% companies cases and disposal of 294 cases.

5. Mrs Ward updated members on the Courtroom Refresh Project which has upgraded the audio and visual technology within 64 courtrooms, with work in progress on the 65th courtroom. 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. Mrs Ward advised that 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 which will incrementally replace the NICTS line of business systems and provide a public facing portal for improved online services, to be implemented between 2025 and 2029. Mrs Ward advised that business case approval has been received and procurement is due to commence in October 2022 with ongoing engagement throughout the process.
6. Mrs Ward updated members 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 which closed on the 26 September 2022. Mrs Ward noted that it is important to note the difference in the work being undertaken by the department who are looking at the legislative provisions, whilst NICTS are looking at how process and technological improvements can be made. Mrs Ward continued 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 NICTS 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 were issued to a number of stakeholder groups and individuals, and the research took place during June and July. Subject to stakeholder availability it is anticipated that the NISRA report will be available in October. Mrs Ward also updated members that the Coronavirus Act has also been extended for a further 6 months until March 2023.

7. Mrs Ward reported 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 March 2023 and Planning Appeals Commission and Water Appeals Commission went live in 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 advised that discovery work began 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. The team are also looking at how the jury management process can be streamlined and digitised - again this work will run between September and March.
8. Mrs Ward updated members on the Estates Programme and advised that 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 commenced in September 2022, which included 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. Mrs Ward added that she would also be in contact with Ms Toman to join the stakeholder Group as a representative for Disability Action.

Litigants in Person (LIP)

9. Mr Allison updated members on the work of the Litigant in Person Group and advised that Les Allamby will be taking over from Sinead Mulhern as Chair of the reference Group. Mr Allison placed on record his thanks to Sinead for all her hard work during her time as Chair. Mr Allison added that 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 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 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.

The overriding objective: an efficient and timely process

10. Mr Allison updated members on out of court settlements involving minors. Subject to Executive approval it is hoped that there will be 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. Mrs Kilpatrick noted 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 in November 2022.
11. Mrs McMurray updated members on the work of the Sub-Committee on Pre-Action Protocols. The sub-committee had been established under the Chair of 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. A Working Group under the direction of HHJ Devlin and District Judge Duncan have produced draft Pre-Action Protocols for the following, Commercial Actions, Personal Injury and Damage Only Road Traffic Accident Claims incorporating Credit Hire and Ejection Proceedings. The draft Pre-Action Protocols have all been issued for consultation. Mrs Hunter confirmed that comments on behalf of Housing Rights had been submitted and that she welcomed the opportunity to discuss the drafts further.
12. In noting the Protocol for Clinical Negligence Litigation in the High Court and Practice Direction for Experts that issued on 29 September 2021(Practice Direction 2/21) Mrs McMurray advised that a draft for the County Court has been prepared by a working group under the direction of HHJ Devlin and is due to issue for consultation. Mrs McMurray updated members on the Defamation, Media and Communication Claims Pre-Action Protocol; a previous draft Pre-Action Protocol for use in the High Court and the County Court had been issued for targeted consultation on the 7 March 2022, and the sub-committee considered the consultation responses. The previous draft was held back from being issued pending the outcome of the Defamation Bill,

which received Royal Assent on the 6 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.

The County Court and Small Claims Court

Increase to small claims jurisdiction

13. Mrs Kilpatrick updated members on the small claims jurisdiction which will increase in October to £5k. On behalf of the Department she noted that the other changes to county court jurisdiction will be dealt with in longer time given the resource implications. The Department has also advised that it is likely that primary legislation will be required before clinical negligence cases can be removed from the general civil jurisdiction.

Civil Hearing Centres

14. Mrs Kilpatrick updated members on the progress of establishing Civil Hearing Centres. LCJO have met with NICTS staff to discuss the potential for a Civil Hearing Centre in Belfast and a further meeting to discuss broader issues is scheduled for the 13 October 2022. 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. Ms Hutchinson noted that this was an initiative that Personal Injury Solicitors were keen to see progressed.

Digitisation for & in court

15. Mrs Ward updated members on the NICTS Digital Strategy which was published on 17 January 2022 with the NICTS ICT Strategy published internally on the same date.

E-Bundles

16. Mrs McMurray updated members on Practice Direction 2/2022 which was 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 and where the parties agree. 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 piloting of e-bundles beyond the High Court is subject to resolution of the storage arrangements and design of the NICTS's 'Future Core Solution'. Professor McKeever queried how Litigants in Person might contribute to the design work. Mrs Kilpatrick advised that it is considered best to scope the broad framework that can then be shared with Litigant in Person representatives within NICTS's development of the 'Future Core Solution'.

17. A draft Electronic Discovery (e-discovery) Checklist was circulated for targeted consultation during the summer recess. Following receipt of responses a final version was submitted to the LCJ for approval. The checklist has now been added to Practice Direction 1 of 2022 (PD 1/22) as a new appendix (Appendix H), effective from 26 September 2022, and is intended 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).

Online Dispute Resolution (ODR)

18. Mr Allison updated members on the commercial consortium leading the online dispute resolution pilot (Consumer Code for Online Dispute Resolution (CCODR)) that continues to work on project development, including the funding stream in respect of which they 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.
19. 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. 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. The Department will provide further updates as work progresses.

NICTS Disability Update

20. Mrs Ward updated members that a meeting has taken place and Sheila McGivern has agreed to represent the Legally Able Group on the Vision 2030 Stakeholder Advisory Group and will attend the next scheduled meeting in November.
21. Ms Toman advised that a co-design process for women, girls and disability has been taken forward and a positive meeting with the Minister has taken place. Work on the UNCRPD has been pushed back due to the backlog caused by COVID. A review of social security is now in progress, Ms Toman also reported an issue where a prosecution did not proceed because the victim was non verbal. The Chair noted that whilst this particular issue is outside the remit of the Advisory Group it should be taken into consideration in the wider context of abuse against vulnerable and disabled people. The Chair asked that Ms Toman continue to bring any issues to the attention of the Advisory Group.

AOB

22. Mr Ross enquired if there are any plans to create a County Court Commercial Hub, Mrs Kilpatrick advised there are no plans at the moment but that a change to jurisdiction may provide an opportunity for consideration of such an approach. Mr Ross also queried that costs sanctions were not part of the draft Commercial Actions Pre-Action Protocol. Ms Hutchinson advised that the Sub-Committee on Pre-Action Protocols had considered this but that it would be a matter to be addressed by court rules.

Date of Next Meeting

23. The sCJC is meeting on the 8 December 2022, it was agreed that the Advisory Group would meet on a date after the 8 December 2022.