

SHADOW CIVIL JUSTICE COUNCIL

**Minutes of the Seventeenth meeting of the shadow Civil Justice Council held on
17th January 2024 at 4.15 pm in the Judges Common Room.**

Attendees: Mr Justice McAlinden (Chair)
Master Harvey
His Honour Judge Gilpin
District Judge Duncan
Debbie Maclam (LCJO)
Paul Andrews (Legal Services Agency)
Andrew Dawson (DoJ)
Cormac Fitzpatrick (Law Society)
Liam McCollum KC (Bar)
Les Allamby (LiP RG) guest speaker

Secretariat: Julie McMurray (LCJO)

Catherine Di Maio (LCJO) (notetaker)

Welcome and Apologies

1. The Chair welcomed everyone to the meeting and thanked members for their attendance. Apologies were noted from Michael Foster and Karen Ward. The Chair extended a warm welcome to Les Allamby who had attended the meeting in his capacity as Chair of the Litigant in Person Reference Group (LiP RG) to provide an update to members on the work of the LiP RG.

Minutes of the last meeting

2. The minutes of the 16th meeting of the Shadow Civil Justice Council on 20th September 2023 were agreed and will be published in due course.

Litigants in Person

3. The Chair introduced Mr Allamby to members and outlined the areas which Mr Allamby wished to discuss, the background to the Litigant in Person Reference Group (LiP RG), the current work of the reference group including the involvement in various NICtS strategies, the case for a Practice Direction on effective participation for LiPs and vulnerable witnesses, promotion of the Equal Treatment Bench Book and thoughts on the McKenzie Friend consultation and the wider case for integrating user and consumer interests into structures such as the shadow Civil Justice Council and Family Justice Board. Mr Allamby thanked the Chair for the opportunity to address the sCJC and set out the background to the LiP RG which was established following

research conducted by the University of Ulster and Human Rights Council. Mr Allamby explained that whilst there is not good reporting of data in respect of Litigants in Person there are around 5,000 of them and the majority of LiP are in family and bankruptcy courts. Mr Allamby noted the struggles with mental health which some LiPs may experience and that there is no direct evidence to suggest whether this is caused by the situation which has brought the LiP to court or as a result of the court process. Mr Allamby explained the role of the LiP RG was to try and bridge the communication gap between LiPs and stakeholders and noted how valuable it was to have a member of the Judiciary on the LiP RG.

4. Mr Allamby discussed the work of the LiP RG to date and that the RG had participated in research conducted by the University of Ulster and the Litigant Voice website and had also made suggestions to NICTS such as the placing of signage to assist LiP's. Mr Allamby advised that whilst the group have no budget or resources they have conducted some successful seminars such as dealing with distressed clients and are keen to consider further seminars such as one to encourage the use of the Equal Treatment Bench Book. The LiP RG is also hoping to press for the consideration of a Protocol for Vulnerable witnesses. Master Harvey said that this is due to be covered later in the agenda. He advised that the sCJC Sub-Committee was currently taking this forward, two subject matter experts had been identified and a draft was currently being prepared. Mr Allamby discussed the McKenzie Friends consultation and that the LiP RG intended to submit a response to the consultation.
5. The Chair stated that he had found being a member of the LiP RG a valuable experience and had gained a lot of insight and noted the valuable work Mr Allamby and Mrs Mulhern the previous Chair of the LiP RG had done. The Chair advised he would be supportive of the sCJC having a wider and more inclusive approach but noted this would not be possible until the sCJC moves out of shadow mode. The Chair noted Mr Allamby's comments on the struggles some LiPs experience with their mental health and queried whether this was due to the situation that brought them to court or if it was as a result of going through a court process. Mr Allamby advised there is no clear evidence but suggested it could be a bit of both and noted that frequently it was LiPs who thought they could navigate the process who often reported the worst experience. HHJ Gilpin referred to those LiPs who cannot afford legal representation and asked if the LiP RG is able to provide any assistance.
6. Mr Allamby advised that the group felt that digital advancement could help LiPs navigate the justice system. Mr Andrews noted that there were some good examples of digital advancements in Vancouver which had been

successful. Mr Allamby noted that investment in digital advancement would be cost effective in the long term.

7. The Chair asked for views on the unbundling of legal services, Mr Allamby advised that he would be in favour of it and that in his experience the majority of LiPs did not have an estimate of cost and it may assist if a litigant could get a service with what they could afford. Mr Fitzpatrick noted the challenges with this and that it is a complex issue and advised that he had taken a note of the issues raised and will refer it to the Law Society. Mr Fitzpatrick also undertook to contact the Law Society member of the LiP RG regarding their attendance at the LiP RG meetings and advised he and the Chair of the Contentious Business Committee would also be a point of contact for the RG. Mr Fitzpatrick suggested that Mr Allamby could also attend a meeting of the Contentious Business Committee.
8. DJ Duncan queried if there were any plans to provide a resource point for LiPs in respect of civil matters and noted that many LiPs would attend court having researched legislation that does not apply in NI. Mr Allamby advised that at present the Litigant Voice website is focused on family courts and noted the Guide to the High Court which is considered too complex with too many legal terms in it. The Chair noted the substantial amount of work that would be involved to collate an information package for LiPs in the civil courts and that it would be a question of funding.
9. Mr Dawson updated members that the LiP Reference Group continues to function well with a number of new LiP members bringing different experience of the justice system and additional insight. The LiP RG continues to engage wherever possible, with members of the Group taking the opportunity to meet with the Lady Chief Justice towards the end of last year and participating in a conference to launch the UU Research on LIP Participation in December. Mr Dawson noted that the RG is in the process of considering its forthcoming work programme and it is expected that, following previous successful events, the RG will host a further seminar early this year on a subject matter to be determined. The Chair thanked Mr Allamby for attending the meeting and suggested he may wish to remain while the McKenzie Friends consultation is discussed.

Action Point: Mr Fitzpatrick to confirm Law Society membership of the LiP RG.

Action Point: Mr Allamby to be invited to speak at a meeting of the Contentious Business Committee.

McKenzie Friends

10. Mrs McMurray provided an update on the public consultation on the draft code of conduct and revised practice note which issued for consultation on the

30th October 2023 and is due to close on the 22nd January 2024. Once the consultation closes the responses will be considered and a report compiled which will then be shared with members for consideration and next steps. Mr Allamby noted that the LiP RG would be submitting a response to the consultation, the Chair thanked Mr Allamby for his attendance at the meeting and Mr Allamby left the meeting.

LCJO Operational Update

11. Mrs Maclam updated members on the revised [guidance](#) which was issued by the Lady Chief Justice's Office on the 6 November 2023. The guidance reflects the recognition that there are matters where the interests of justice determine that physical attendance is necessary unless otherwise directed. The Chair noted the importance of open and transparent justice, and that remote attendance should only be in exceptional circumstances, and this should not include court hopping. Mrs Maclam referred members to the [Judicial Statistics](#) published in November for July to September 2023 which show that the County Court and District Judges sat a total of 735 days during the quarter. Within those days 384 were spent on criminal business and 351 days on civil and family business. Notable figures show a 53% increase in the number of Equity cases received compared with the same quarter in 2022, there was also a 23% increase in the number of small claims received and a 26% increase in the number of small claims disposed of compared to the same quarter in 2022. The Chair noted the increase in the number of small claims disposals and queried with DJ Duncan if he had any thoughts on the increase of small claims disposals. DJ Duncan suggested that this was probably due to the fact that there were now two Small Claims courts per week sitting in Laganside. He has capacity for this since he believes that the volume of civil bills have decreased with higher costs of credit hire and increasing personal injury claims resulting in what had previously been District Judge cases now being brought in the County Court Judge's court
12. Mrs Maclam referred to the figures for the High Court which showed that there were 298 High Court sitting days during the quarter, the highest proportion of which was spent on Bails business, 84 days (28%). Figures show that 957 writs and originating summons were received an increase of 4% and 809 disposals a 164% increase on the same quarter in 2022. There was also an increase of 45% in the number of applications for leave to apply for Judicial Review and a decrease of 74% in applications for Judicial Review received. Chancery cases received increased significantly by 81% and the number of Chancery cases disposed of also increased by 79% compared to the same quarter in 2022.

Vision 2030: Judicial Advisory Group

13. Mrs Maclam updated members that the work of the Judicial Advisory Group chaired by Mr Justice Huddleston has paused pending award of contract to the successful supplier. Once the supplier has been appointed, representatives will be engaged, in alignment with the agreed Themis implementation plan in design workshops to discuss judicial requirements and expectations for future ways of working to be introduced with the re-design of services supported by the new Themis digital IT system and operating model. In the interim, the views of the judiciary and JAG are being communicated during competitive dialogue workshops with the three prospective suppliers by Kim Elliott, Head of Reform (Criminal & Digital) for the Lady Chief Justice's Office. These are running throughout January and February. Evaluation of Best and Final Offers will be undertaken by Vision 2030 between March and May and any non-commercially sensitive issues arising will be referred to the Chair / members as appropriate. NICTS will continue to engage with stakeholders throughout the process. The Chair queried if there was a risk in the current financial climate that the Themis system may be paused. Mrs Maclam advised that the business case is being progressed and in the event of an Assembly returning it would be expected that there would be a transformation budget and that NICTS would bid for it.

E-Bundles

14. Mrs Maclam updated members on the e-bundles pilot and noted that LCJO and court staff are continuing to monitor the use of e-bundles by collating information as to how many are received, for which business areas, etc which will be reported at the end of each term to the Lady Chief Justice. Uptake remains disappointing, despite efforts by the LCJ and High Court Judiciary to encourage greater use. Mrs Maclam noted at the last meeting of the sFJB that solicitors felt there were cost issues. The Bar Library continues to offer their service directly to solicitors at minimal cost, so any further information as to reasons why this might be the case should be communicated to LCJO via the secretary.

Mrs Maclam set out the figures during the monitoring period September to December 2023:

- 15 e-bundles were received during the period September to December 2023;
- 53% (8) of these were not compliant in format with PD2/22 ;

- 13% were confirmed as not used by judges;
- Potential savings in hard copy pages was 3,838.

The Chair noted the disappointing figures and that more needed to be done to encourage a move away from hard copy bundles. Mr Andrews noted a previous case where a wasted costs order had been made by a Judge where large bundles had been prepared and never referred to during the hearing. Mr Fitzpatrick discussed that it is easier to prepare a hard copy bundle and that some support staff in the solicitors office are not familiar with compiling e-bundles.

Digital Programme

15. Mrs Maclam read out the update on behalf of NICTS and advised that the secretariat would communicate any queries arising from the update to NICTS. Mrs Maclam explained that work has continued on the development of the new Themis system as noted above. Work is also ongoing to undertake scoping work to identify an enhanced audio & video solution to introduce additional improved functionality. It is planned that Requirements & Scope solution options will be defined by March 2024. Mrs Maclam advised that work is also continuing to undertake discovery to identify the opportunity for process, technical and service design improvements within the Enduring Powers of Attorney Process. In order to agree a plan to progress any arising recommendations, it is planned that the Discovery Report will be completed with recommendations and best route to deliver future improvements. The timescales for this project will depend upon available resources. The documentation of NICTS current operating model in advance of appointment of Themis Delivery Partner has also commenced and it is hoped the Level 0-2 analysis will be completed by June 2024.

Estates Programme

16. Mrs Maclam read the update on behalf of NICTS, work has continued on the development of the Outline Business Case for the RCJ and it is hoped that the Department of Finance approval will be received by March 2024. NICTS have also been exploring the potential of using the Old Townhall as part of the RCJ Decant Solution and the outcome of this assessment will determine next steps for the project. Progress has also been made on the Northwest Accommodation Project. Engagement has commenced with CPD to agree procurement strategy and to appoint an Integrated Consultancy Team, it is hoped that ICT procurement will commence in January 2024.

Out of court settlement of cases involving unrepresented minors

17. Mr Dawson provided an update to members and advised that the Department hopes, subject to the views and agreement of an incoming Minister of Justice, and subsequent Executive approval, to include provision relating to minor settlements in a Modernisation of Justice Bill. Mr Dawson advised that officials held a very informative meeting recently with legislative counsel and the DoJ are reflecting on the comprehensive analysis which has been provided. Mr Dawson added that it will be a challenge, once all of the various elements are considered, to identify a coherent legislative solution that takes account of the various complexities, including upon whom any duty should fall, monitoring, sanctions and enforcement but the DoJ will continue to consider these with a view to putting a position to a minister once the Assembly is back.

Pre-Action Protocols (PAPs)

18. Master Harvey provided an update to members on the review of the Personal Injury Protocol and advised that a working group has been established to review the current Personal Injury and Pre-Action Protocol for the High Court. A draft has been prepared by the working group and was considered by the sub-committee on Pre-Action Protocols at its meeting on the 10 January 2024. The Sub-Committee is due to meet again on the 20 March 2024 and it is hoped a draft will be available after that meeting which can be shared with the sCJC.

Review of Practice Directions

19. The Chair advised members that the review of Practice Directions has now completed but LCJO staff are continuing to review the practice directions section of the Judiciary NI website to make it more user friendly with a better search function.

Alternative Dispute Resolution and Mediation

20. Mr Dawson provided an update on the commercial consortium which is leading the online dispute resolution pilot (Consumer Code for Online Dispute Resolution (CCODR)). Funding has been secured to allow online dispute resolution to be trialled and officials are now working with CCODR to explore how the Department can best and appropriately support the pilot.
21. Mr Dawson further advised that the General Authority to allow mediation in non-family cases without the prior authority of the Legal Services Agency is continuing to operate, as is the provision for prior authority if the LSA agrees to a higher rate or additional hours. An evaluation of the General Authority is in train which will inform next steps but data continues to suggest uptake has

been fairly limited thus far. The Chair asked Mr Dawson if he could make enquiries as to how the pilot was being funded.

Action Point: Mr Dawson to make enquiries regarding funding.

The County Court and Small Claims Court

22. Mr Dawson advised members that the small claims jurisdiction increased in October to £5k. The other changes to the County Court will have to be dealt with in longer time given the resource implications. In terms of increasing the general civil jurisdiction of the county court, primary legislation is not required. In line with the provisions of the County Courts (Northern Ireland) Order 1980, the Department may, after consulting with the Lady Chief Justice, increase the upper limit for claims in that court tier. Mr Dawson added that any resultant changes may be progressed through an order subject to the Assembly's negative resolution procedure. Any legislative change in the current political circumstances and ongoing absence of Ministers, however, requires consideration of a number of other factors. Perhaps the most important is that a decision to act, in whatever guise, needs to be in line with the Secretary of State's Guidance on decision-making for Northern Ireland Departments. This outlines that senior officers are able to exercise a function of the department if it is in the public interest to do so. The Guidance also outlines that any major policy decisions, such as the initiation of a new policy, programme or scheme, including new major public expenditure commitments, or a major change of an existing policy, programme or scheme, should normally be left for Ministers to decide or agree.
23. Mr Dawson noted that from discussion with colleagues, an increase to the general civil jurisdiction, even where taking account of prevailing economic conditions, is likely to be viewed as a major change of existing policy and should be left for an incoming Minister to agree. Mr Dawson added that the DoJ do not have sufficient evidence of a compelling public interest to progress this issue at this point, and do not have the information to identify a detriment if they do not act until a new Minister is in post. Mr Dawson said the DoJ would be happy to take and consider any representations made in those regards. In terms of an inflationary uplift in the general civil jurisdiction of the county court, this was considered back in 2021 when developing the public consultation on this issue. At that time, this would have equated to a small increase to £35,000 based on the Bank of England's GDP deflator. An inflationary uplift would now be about £40,000. Mr Dawson said that the Departmental view was that an inflationary increase was undesirable, particularly given the need for Legal Aid amendments that would need to accompany any change in jurisdiction and an increase to £40,000 may not result in the type of meaningful redistribution of civil business between the

High Court and the county court that a larger increase would bring. Mr Dawson added that such an increase would also not provide a significantly clearer dividing line between the respective jurisdictions or bring greater certainty for litigants as to where to issue proceedings. Mr Dawson concluded that in the current climate the DoJ are also mindful of any resultant financial implications for Legal Aid provision, judicial resourcing (particularly at district judge level where the additional caseload is most likely to rest), the county court costs scales, and IT changes to NICTS systems. Mr Dawson outlined that among a number of other competing priorities, the DoJ are currently taking forward a business case to determine what the budgetary implications are of any increase in jurisdiction. This work is continuing, and Mr Dawson hopes to be in a position to advise a Minister once the Executive has reconvened.

24. Mr Dawson also noted that there were a number of related issues outlined in the public consultation on increasing the jurisdiction of the county court which the DoJ would like to progress in tandem with any increase to the upper limit for claims. With regard to clinical negligence cases, the Minister had stated her preference to maintain the current county court jurisdiction of £30,000 for such claims rather than making them High Court-only actions. Mr Dawson advised this would require a change to primary legislation and two other changes, namely providing county court and district judges with a statutory power to remove cases from the county courts to the High Court, (also requiring changes to primary legislation), and increasing the upper limit in defamation cases, which would be subject to further engagement with stakeholders. Mr Dawson said that any increase in general civil jurisdiction is, however, not dependent on also addressing these issues, though the DoJ preference is to deal with them at the same time. HHJ Gilpin noted that there would be a public cost if changes were not made to the County Court jurisdiction and highlighted the issue of modest claims migrating to the High Court which ordinarily would have been dealt with in the County Court. Mr Dawson advised that the DoJ did not view this as a closed issue and further discussions would take place. The Chair queried if there was an update in relation to the revision of the Green book, HHJ Gilpin advised that the revised draft was with the Law Society for formatting. Master Harvey added that the delay in issuing the revised Green Book was having an effect on the disposal of cases. Mr Fitzpatrick advised he would make enquiries with the Law Society and would advise the sCJC.

Action Point: Mr Fitzpatrick to contact the Law Society regarding the Green Book.

Experts

25. Master Harvey provided an update on the Draft Guidance on the instruction of Experts in the High Court which issued for targeted consultation on the 19 October 2023 and closed on the 1st December 2023. Consultation responses have been considered and a new draft is being reviewed by the sCJC Sub-Committee on Pre-Action Protocols.

Disability

26. The Chair advised members that following Ms Tomans attendance at the sCJC on the 8th March 2023 it was agreed that Ms Toman would write to the Judicial Studies Board with a proposal regarding providing training to the Judiciary. The Judicial Studies Board have been in contact with Ms Toman and are awaiting a proposal from her. Mr Fitzpatrick advised that Disability Action were also offered a CPD slot from the Law Society and an opportunity to have an article included in the Writ and engagement on these proposals is continuing between the Law Society and Disability Action. Mr McCollum advised that the Bar are also progressing a training course on vulnerable witnesses which is due to take place in a few weeks' time.

Civil Justice Council National Forum

27. HHJ Gilpin provided an overview of his experience at the English & Welsh Civil Justice Council's 12th Annual Forum in London on Friday 17 November. The overarching theme was "improving justice in a cost of living crises." Those assembled were reminded of the Council's statutory purposes and noted some of the areas the Council is presently focused on, a review of costs, pre-action protocols, mental capacity issues arising in civil litigation, the importance of establishing proper data when discussing issues in civil litigation and the future, particularly digital justice. The Lady Chief Justice of England & Wales, Lady Carr noted how in many ways the Council has led the way for change and referred to the importance of civil justice for society not just for the individual parties. In doing so she referred to the decision of the Supreme Court in the Unison case and referred to civil justice being the "plumbing," providing unseen but vital support to the proper functioning of society. HHJ Gilpin reported that he had taken part in a further session about issues in dealing with litigants in person. Most of the discussion focused on a desire expressed by several of the English judges to see standardised court orders expressed in plain English that litigants in person can readily understand.

28. HHJ Gilpin reported that the event was thoroughly worthwhile and wondered whether we should have our own annual civil justice forum inviting a range of those involved in civil justice in NI (broadly defined) to meet together.
29. The Chair noted that the E&W Judicial Guidance on AI had been adopted and that it is a current topic where more information and training is needed. He asked the secretariat to add it to the agenda of the next sCJC meeting. Mr Andrews also queried if the privacy notice had been changed on the basis of AI.

Action Point: Secretariat to add AI to the agenda of the next meeting.

Update on Historic Review of clinical negligence writs/personal injury writs

30. Master Harvey provided an update on the historic review of writs which commenced on 21 November 2022, reviewing all historic writs on the court system of which there are approx. 11,000. The review was undertaken in tranches of 500, now approx. 4,500 cases into the process. It is a 'spring clean' and the work continues, the solicitor profession are to be thanked for their cooperation with this major piece of work. The clinical negligence specific aspect of the exercise is complete as Master Harvey explained that he has now reviewed over 100 cases which had never been subject to case management review. Currently there are over 2,200 active clinical negligence cases. Mr Andrews queried if a line could be added to the letters that are sent out to ask the parties who are legally aided to notify legal aid of the case outcome, Master Harvey confirmed he would raise it with the Business Manager, Mrs Maclam suggested a line could also be added to the E-Informer.

Action Point: Master Harvey to liaise with Business Manager regarding line to be added to correspondence in respect of legal aid.

Action Point: Mrs Maclam to make enquiries if a line could issue via the e-informer regarding legal aid.

Summons Court/review of outstanding summonses.

31. Master Harvey advised members that since the 10 November 2023, the Summons court has returned to in person every Friday commencing at 11.30am weekly in the Master's courtroom, the current start time is due to the court being used for divorces Friday am. [Updated guidance](#) was issued on the 6th October via the Bar and Law Society setting out the process. Consolidated guidance updating the previous document from 28 October 2022, detailing the review system but with summons court now also covered, has also been uploaded onto the judiciary NI website and Form KBCI2 is now no longer required. Master Harvey added that this is a high volume and fast paced court and, time permitting, some summonses may be able to be dealt with on the

day. Contested cases will be given a hearing date by the Master's secretary and urgent business will be expedited where genuine urgency is demonstrated. Master Harvey noted the benefits of the new system; that it was well received based on informal feedback from counsel and solicitors at reviews and contests, less emails, less admin, quicker turnaround of summons, more control over listing, training ground for new counsel and solicitors, encourages settlement and discussions, helps clarify relief sought and addresses issues with poor completion of forms. Master Harvey said that Thursday in person reviews are in person as the default and have helped take some pressure off staff with less administration required since the KBCI3 form has been dispensed with. In relation to contested hearings, Skeleton arguments continue to be required in more complex cases, commercial actions and legacy matters and the direction for use of bundles is that they should be electronic. There have been signs of improvement in this regard. Master Harvey advised there are approximately 3,500 writs per year, 1,100 summonses a year and there are around 200-300 ex-parte applications a year. Turnaround time is down from average 17 weeks to around 10 weeks now

Historic review of summonses

32. Master Harvey explained that there are between 100-200 summonses without a hearing date as the moving party has failed to come back to the court office as directed, seeking a contest date. Master Harvey is currently working with the Central Office to identify these cases, write to the solicitors involved and arrange special court sittings to clear these by either strike outs, orders or listing the matter for contest.

Pre-setting down review/Trial dates pre-setting down

33. Master Harvey advised members that he has introduced a pre-setting down review which is a new procedural step in clinical negligence cases introduced last October, reviewing cases immediately prior to set down. Historically, cases were subject to directions up to trial, a trial that is some 12 months or more away and there is no interim step to check the "temperature" of the case. At pre-setting down review Master Harvey seeks to ascertain if there are issues of real substance that can realistically de-rail the trial date and review before the Judge. Master Harvey has noted that it would take time before the benefits of the pre-setting down review would be noticeable but there is now evidence it is working. He has noted on a weekly basis there are cases in the Thursday list, not making their way to judge's review and trial list as they are not ready, having been caught at the pre-setting down review. The recurring theme is expert reports outstanding, reports not exchanged, experts not having met or further quantum issues requiring investigation. Master Harvey highlighted an issue with trial dates. Some practitioners were encountering

difficulty in booking a trial date, after a master's review direction, as they hadn't paid the fee. Discussions have now taken place with the court office to make staff aware that the pre-setting down review is the safety net that ensures the case is set down and fee paid, which the office seems to be content with. Master Harvey advised that during a meeting of the sCJC Sub-Committee feedback from members had been that a pre-setting down review in personal injury cases was not necessary, the Chair noted that this was not his experience and Mr McCollum suggested that a review hearing was necessary for complex cases. Master Harvey suggested that this could be addressed by allowing for pre-setting down reviews in such actions at the parties request and he would keep it under review. He confirmed he had discussed the process with Colton J who was content there was no requirement for a judge's review if there were agreed directions by 12 noon the day before. Mr Fitzpatrick agreed and noted that a review date can help the parties to focus on the issues. **Review of Protocol for Clinical Negligence Litigation in the High Court**

34. Master Harvey advised members that a review of the Clinical Negligence Protocol for the High Court is due to take place in 2024. Views are currently being collated from stakeholders and it is intended that an overview will be available at the next meeting on the 1 May 2024.

Determining Mental Capacity in Civil Proceedings Working Group: Consultation

35. The Chair advised that the sCJC is maintaining a watching brief on the CJC working group on determining mental capacity. The working group issued a consultation on the 15th December which has been shared with members, the Chair asked members to review the consultation and the questions and asked if comments could be sent to the secretariat before the closing date.

Action Point: Members to send in any comments on the consultation to the secretariat.

Hague 2019

36. Mr Dawson provided an update to members noting that since the last update on 23rd January 2023 the UK government saw an overwhelmingly positive response to a public consultation on their intention to become a contracting party to Hague 2019. Two responses from Northern Ireland (Law Society and Bar Library) felt that Hague 2019 would have a positive impact with significant benefits, noting the geographical position of NI, and the practical cross border difficulties experienced post Brexit. The UK Government has since published its response to consultation and has taken the decision to proceed to sign and ratify the Convention. Mr Dawson advised that as signing and ratifying the convention is not a devolved matter this decision is being

taken by the UK Government. Before ratification of the convention can take place, all implementing legislation, regulations and court rules should be in place. Implementation of the convention in domestic law is achieved under the Private International Law (Implementation of Agreements) Act 2020 with regulations being made by the Department of Justice or the Secretary of State with the consent of the Department. Mr Dawson noted the Ministry of Justice Permanent secretary, Antonio Romeo, wrote to the Head of the Civil Service to ascertain Northern Ireland's intention for implementing legislation and the correspondence was passed to the DOJ Permanent Secretary to reply. A decision was recently taken to consent to regulations at Westminster extending to Northern Ireland. A similar approach is being taken in Scotland.

37. Mr Dawson said that specific aspects of implementation are still being worked through with regular ongoing engagement at official level. The UK Government is in the process of drafting regulations and envisage implementing the Convention using a registration model for foreign judgments in our domestic courts. A similar model is provided for in regulations implementing Hague 2005 Convention which made amendments to the Civil Jurisdiction and Judgments Act 1982. Some specific implementing provisions will be the subject of a targeted consultation being undertaken by the Ministry of Justice in early 2024 to include Law Society NI and Bar Library NI around the details of the registration model. Mr Dawson confirmed that court rules will also likely require amending across each of the UK jurisdictions. E&W are hopeful that all implementing legislation and rules can be in place by the end of June 2024 although rule amendments in Scotland and NI are likely to take longer. As such regular engagement across all jurisdictions at official level remains ongoing it is hoped that the Convention can come into force in all UK jurisdictions at the same time. Mrs Maclam suggested that the DoJ should notify the Secretary to the County Court Rules Committee regarding the impending rules changes.

Action Point: DoJ to notify Secretary of County Court Rules committee of changes required.

Review of the Defamation Act (NI) 2022

38. The Chair referred to the Defamation Act (Northern Ireland) 2022 which received Royal Assent on 6 June 2022 and introduced a number of changes to defamation law in this jurisdiction. These included the removal of the presumption in favour of trial by jury in defamation cases. The Department of Finance (DOF) has policy responsibility for the law on defamation with day-to-day management of this area falling to Civil Law Reform Division. Section 11 of the 2022 Act commits DoF to review defamation law in this jurisdiction including how the Act has been operating. Under Section 11 DoF must formally report on its findings to the Northern Ireland Assembly by June 2024

and have asked for any comments or observations by 26 January 2024. The Chair asked members if there were any comments on the Act and it was noted that the most significant change was the removal of the presumption of jury trials.

AOB

39. Mr Andrews suggested that a brief summary of the agenda items could be circulated in advance of the meetings which would give members the opportunity to consider the items in advance and focus discussions. Mrs Maclam advised that the sCJC Advisory Group members receive a brief in advance and that it works well. Members agreed with this approach and the Chair asked that a brief be prepared for members for the next meeting.

Action Point: Secretariat to prepare a briefing for members for the next meeting.

Next Meeting

40. It was agreed the next meeting of the Shadow Civil Justice Council would take place on the **1st May 2024 at 4:15pm.**