

SHADOW CIVIL JUSTICE COUNCIL ADVISORY GROUP

Minutes of the Eighth Meeting of the shadow Civil Justice Council (sCJC) Advisory Group held on 27th September 2023 at 4.00pm via WebEx video conferencing.

Attendees: Debbie Maclam (LCJO)
Karen Ward (NICTS)
Alastair Ross (ABI)
Professor McKeever (UU)
Maurece Hutchinson (JMK Solicitors/ APIL)
Nuala Toman (Disability Action)
Patrick Yu (NICRE)
Alison Cassidy (DAC Beachcroft)
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 Ursula O'Hare, Patricia Tennyson, Steven Allison and Kate McCauley.

Minutes of the Meeting 22nd March 2023

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

Covid-19: Business Continuity, Recovery and Modernisation

LCJO Operational update

4. Mrs Maclam updated members that revised guidance was issued by the Lady Chief Justice's Office on the 15 May 2023, the revised guidance set out that from 15 May 2023, all legal representatives, participants in proceedings, members of the media and public should attend court in person unless a judge directs they can attend remotely. The Court of Appeal, Divisions of the High Court and presiding judges at other tiers may, where deemed necessary, issue specific practice guidance as to when remote attendance may be permitted. The practice guidance for the Masters' Courts, including for undefended divorces, remains unchanged.

5. The Chair discussed the Judicial Statistics for April to June 2023 which were published in August and figures for the High Court. The Chair noted that there is a 68% increase in Chancery cases and a 24% increase in the number of writs and summonses disposed of and a 18% increase in the number of Judicial Review applications received and advised that the significant increase in Chancery cases would be kept under review. The Chair discussed the figures for the County Court and noted that there had been a significant increase of 42% in the number of small claims disposed of and a 2% increase in the number of small claims received. There was also a notable decrease of 21% in the average time take to dispose of a small claim. The Chair noted there had also been a 14% increase in the number of civils bills received and a 1% decrease in the number disposed of. Ms Hutchinson queried if disposal times were also available for writs in the High Court. The Chair advised that enquiries would be made.

Action Point: Secretariat to review the Judicial Statistics for disposal times in the High Court.

Operational Modernisation Update
NICTS Digital Programme

6. Mrs Ward updated on the NICTS digital programme, work on Themis has progressed since the last meeting, 3 shortlisted suppliers have now been invited to commence competitive dialogue with phase 1 Dialogue now completed which involved 7 sessions with each of the suppliers. The system requirements have been updated to reflect Phase 1 Competitive Dialogue outputs. It is envisaged that the evaluation of 3 bidders' Detailed Solutions will be completed between the end of September and the end November 2023. It is anticipated that feedback will be provided to shortlisted suppliers on submitted bids by December 2023 and Phase 2 competitive dialogue will be commenced in January 2024. A Full Business Case should be developed by February 2024. Professor McKeever queried if consideration had been given as to how data would be captured by the new system. Mrs Ward advised that data capture had been set out as an overarching requirement of the new system and that NICTS were looking at the different section 75 categories and were also considering the report by Dr Natalie Byrom who prepared a report for HMRC to advise on strategies to enhance the organisation's academic engagement and improve how it makes data available for research purposes.
7. Mrs Ward advised that the discovery exercise on scope for delivery of improvements to the Enduring Power of Attorney Process has been paused due to resource constraints. Work is also progressing on the scoping work to identify an enhanced audio & video solution to introduce additional and improved functionality. It is planned that work to define requirements and scope solution options will be completed by March 2024. Mrs Ward confirmed

that the new system for the Parole Commissioners went live on the 26 September 2023 and that the new systems for the Official Solicitors and the Office of Care and Protection have also now gone live.

Estates Programme

8. Mrs Ward provided an overview on the work that has continued on the RCJ Services Infrastructure Project. The Royal Institute of British Architects (RIBA) Stage 1 is complete and the draft Outline Business Case 1 (OBC1) has been prepared. The internal review is underway with Gateway 1 scheduled and the assessment to take place in October 2023. It is anticipated that the approval process will conclude by late summer. The Northwest Accommodation Project team is progressing the Strategic Outline Case (SOC) and the Addendum has been approved by DoJ and DoF Supply. Engagement has taken place with Historic Environment Division (HED) confirming that an extension to Bishop St Courthouse is feasible and a recommendation has been put forward to segregate criminal, civil and family business. Mrs Ward advised that a Workshop was held with the Ministerial Advisory Group (MAG) and endorsement of the proposed development of Bishop St Courthouse has been received. Engagement has also commenced with Construction and Procurement Delivery (CPD) to agree a procurement strategy to appoint an Integrated Consultancy Team (ICT).

Judicial Modernisation Update

Vision 2030: Judicial Advisory Group

9. The Chair discussed the work of the Judicial Advisory Group which is chaired by Mr Justice Huddleston. Work has continued, through its sub-groups, 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. Discussions to date have looked primarily at high level civil and family business from appropriate promotion/signposting of alternative resolution options or initiatives using an online portal; online case initiation and progression; case management workflows and judicial directions; potential for e-service and digital signatures, and management information useful to the judiciary. The Chair noted the agreed judicial expectations and assumptions were communicated at a series of competitive dialogue workshops over the summer to the three short-listed suppliers and will help inform how the new processes are developed once the contract is awarded in early 2024.

E-Bundles

10. The Chair advised that the LCJO issued a survey to judiciary on 1 March on the use of e-bundles since the issue of PD2/22. The experiences of judges helped inform the Lady Chief Justice of progress and concerns, and it was agreed that Judges and Masters would encourage greater use of e-bundles in specific areas to include authority bundles in the Court of Appeal, Undefended Divorces, and Extradition. The Chair said all High Court Judges were trained in using e-bundles in September 2022, and further sessions were arranged in April / May for the Masters and County Court Judges dealing with extradition. LCJO and court staff are also monitoring use of e-bundles – 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. During the first monitoring period:

- 43 e-bundles were received during the period March - Aug 2023
- 44% (19) of these were not compliant in format with PD2/22
- 49% were confirmed as used by judges (NB not all have yet been heard / staff may not know in all instances)
- Potential savings in hard copy pages was just under 26000; 33% of which were for COA; 51% for Judicial Reviews; 12% for OCP.

Judicial Portal & App

11. The Chair updated members on the contract for the Judicial Portal & App which has now been awarded to Cranmore Consulting. LCJO staff have engaged with Cranmore to scope out requirements and the Development & Design phase of the project completed on 7 September. The project has now moved into the User Acceptance Testing (UAT) phase and both staff and judiciary will be involved in testing the new portal. Planned delivery timescales remain on track for launch of the portal on 31 October and the app on 31 December.

Litigants in Person (LIP)

12. The Chair noted that an update had been provided by the DoJ in advance of the meeting which noted the LiP Reference Group continues to function well and new LiP members with a range of experience of the justice system have recently joined the Group bringing additional insight. To date, the Reference Group has focused on improving the experience of LiPs in family proceedings and contributing to the Department's modernisation and reform initiatives,

but the Group is due to consider its forthcoming work programme in coming weeks and a greater focus on supporting LiPs in civil proceedings may emerge. There remains a high level of interest among LiP members on the role of McKenzie Friends and consistency of approach to them.

13. Following a successful webinar in March 2023 on enabling the effective participation of unrepresented and vulnerable litigants, the Reference Group is considering hosting a further event late in 2023 or early 2024. The Department has now reached agreement with Ulster University and is funding the maintenance of the web tools developed by the University for LiPs involved in private family law disputes. Although subject to ongoing monitoring to establish use and benefits, the tools have been very well received by users to date and it is hoped they can provide a platform for the development of further supports for LiPs in the future as resources and funding allow.
14. The Chair asked members, in the absence of the DoJ representative, if there were any queries arising from the update that should be fed back. Professor McKeever advised that in the long term it is hoped that the web tools will move from the University Ulster website to the DoJ which would hopefully make the resource more prominent. Professor McKeever added that there will be a research launch on the 13 December 2023 which will be a hybrid event and invitations will issue.
15. Ms Toman noted that Disability Action is continuing to support LiPs and noted the difficulties that those with complex needs will encounter with the withdrawal of funding to services offered by organisations such as Disability Action and the Law Centre. The Chair thanked Ms Toman for raising these issues and noted the difficult situation and said that the comments would be passed onto the DoJ.

The overriding objective: an efficient and timely process

16. The Chair advised that the DoJ had not reported any progress since the last meeting. Professor McKeever queried why in the title of the overriding objective there is no inclusion of fairness as in E&W. Mrs McMurray advised that the title of overriding objective is a direct read across from the Gillen report and not what is contained within the County Court or High Court Rules. Mrs Cassidy confirmed that the rules state that the parties must be on an equal footing and include the terms equality and fairness.
17. Ms Hutchinson updated members on a meeting between herself the DoJ, Mr Ross and Mrs Cassidy which took place at the start of September. It was noted

that there had been difficulties reaching agreement with the legislative counsel and that the agreed position was to seek an amendment to the High Court and County Court Rules to include pre-proceedings. There is also a query about the extent of the court's jurisdiction over pre-proceedings. Ms Hutchinson noted that there are examples of when the court does have such jurisdiction such as in mortgage matters.

Pre-Action Protocols

18. Mrs McMurray advised members that the following pre-action protocols for use in the County Court were published on the 6 February 2023 following consultation; Commercial Actions, Ejectment Proceedings and Personal Injury and Damage only Road Traffic Accident Claims. The Clinical Negligence Practice Direction and Protocol (County Court) was published on the 1 June 2023. A review of the Clinical Negligence Protocol and Practice Direction for the High Court is due to take place at the end of the year.

Civil Justice Council Report on Pre-Action Protocols

19. Mrs McMurray explained to members that the Civil Justice Council published their final [report on Pre-Action Protocols](#) on the 21 August 2023 and the report has been shared with members in advance of today's meeting. The sub-committee on Pre-Action Protocols is due to meet to discuss the report and consider the recommendations and the possibility of drafting a General Pre-Action Protocol for NI.

Review of Personal Injury Pre-action Protocol & Practice Direction

20. Mrs McMurray provided an update to members on phase two of the review of Practice Directions completed in June 2023 and a further consultation issued to stakeholders on the 28 June 2023 which closed on 9 August 2023 responses were considered and Practice Direction 02/2023 issued on the 11th of August 2023 to revoke those Practice Directions deemed obsolete. This now concludes the review of Practice directions. Work is also ongoing to review the practice directions section of the Judiciary NI website to make it more user friendly, the Chair commented that this would be a worthwhile exercise.

The County Court and Small Claims Court

Increase to small claims jurisdiction

21. The Chair noted that the DoJ had reported no progress since the last meeting but said that concerns had been noted from some members of the sCJC regarding the small claims increase. The DoJ had commenced a review of the

increase and a meeting was scheduled to take place in mid-October between the department and members of the Judiciary.

McKenzie Friends

22. Mrs McMurray advised that a draft code of conduct has been prepared and has been shared with members in advance of today's meeting. The draft code was discussed at the last meeting of the sCJC on the 20 September 2023 and it was agreed that the code of conduct should be issued for public consultation. It is hoped that the consultation will issue before the end of the year. Professor McKeever suggested there may be some issues with the code covering both civil and family and the McKenzie Friends access to confidential papers in family cases. Professor McKeever commented that the application form was positive but asked if it was necessary to ask for a CV if the application form could include the questions that the CV would answer. She also asked if consideration had been given to adapting the form used in criminal proceedings. Professor McKeever said that Citizens Advice was no longer operational and noted that there are no organisations in NI that provide advice in family matters. She suggested that including reference to the different resources available such as the web-based tools should be considered.
23. Ms Toman queried if safeguarding measures could be put in place for LiP's and queried whether someone with learning difficulties would understand the code. Ms Toman said that the code should be accessible for those with different needs.

Experts

24. Mrs McMurray updated members that draft Guidance on the instruction of Experts in the High Court has been drafted and a copy has been shared with members in advance of today's meeting. The draft guidance was discussed at the last meeting of the sCJC on the 20 September 2023 and members agreed that it should be issued for targeted consultation. It is hoped that the consultation will issue before the end of the year.

Online Dispute Resolution (ODR)

25. The Chair discussed the update provided by the DoJ in advance of the meeting which noted that the commercial consortium leading the online dispute resolution pilot (Consumer Code for Online Dispute Resolution (CCODR)) continues to explore options to fund a pilot involving cases which would normally fall to the small claims court. In the absence of additional funding the

pilot will not be able to proceed in the immediate future. 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 to date suggests uptake has been fairly limited thus far.

Disability

26. The Chair discussed the update provided to members in advance of the meeting as Ms Toman lost connection to the meeting. The Chair noted that Ms Toman attended the last meeting of the sCJC on the 8 March 2023 and provided an update to members on the issues that those with disabilities encounter when navigating the justice system. It was agreed at the last meeting that Ms Toman would write into the Judicial Studies Board with a proposal regarding providing training to the Judiciary. Ms Toman has been in contact with JSB who are progressing this. It was also proposed at the last meeting that a representative from the Disability sector should be invited to join the Litigant in Person Reference Group, this has also been taken forward and the Terms of Reference of the Litigant in Person Reference Group have been amended to reflect this.

AOB

27. The Chair asked members if there were any matters they would like to raise and Mr Yu advised that he would like to enquire about Racial Equality training for the Judiciary. The Chair advised that she would pass on Mr Yu's contact details to JSB. Ms Toman noted the challenging political situation was making things worse alongside the cost of living crisis and that reform of equality legislation has been outstanding for some time. Mr Yu suggested that the tribunal system in NI should be looked at. Professor McKeever added that this had been on the agenda at one point prior to the previous collapse of the Assembly. The Chair explained that this group is limited in what it can progress but the issues raised would be noted in the minutes and fed back to the DoJ.

Action Point: Secretariat to pass on Mr Yu's contact details to JSB.

Date of Next Meeting

28. The next meeting of the sCJC Advisory Group will take place on **15 May 2024** at 4pm and will be an in-person meeting.