

## SHADOW CIVIL JUSTICE COUNCIL

### Minutes of the Tenth Meeting of the shadow Civil Justice Council held on

16th September 2021 at 4.15 pm via Webex video conferencing.

Attendees: His Honour Judge Devlin  
District Judge Duncan  
Master McCorry  
Liam McCollum QC (Bar Council)  
Paul Andrews (Legal Services Agency)  
Elaine Topping (NICTS)  
Laurene McAlpine (DoJ)  
Mandy Kilpatrick (OLCJ)  
Michael Foster (DoF)  
Kim Elliott (OLCJ)

Secretariat: Julie McMurray (OLCJ)  
Catherine Di Maio (OLCJ)

#### Apologies

1. The Chair welcomed everyone to the meeting and thanked members for their attendance. Apologies were noted from Mark Goodfellow, Karen Ward, Cormac Fitzpatrick and Mandy Kilpatrick.
2. The Chair placed on record his thanks to District Judge Brownlie and Mr Luney for all their work as members of the sCJC. The Chair also congratulated Mr Goodfellow in his new role as Chief Operating Officer and welcomed District Judge Duncan to the Council and thanked him for joining the sCJC.

#### Previous minutes - shadow Council meeting on 27<sup>th</sup> April 2021

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

#### Covid-19: Business Continuity & Recovery

4. Mrs Topping provided an update on behalf of NICTS and advised that the Nightingale Court facility at ICC Belfast was stood down as of 3<sup>rd</sup> September. Coroners Court and Small Claims Court hearings will now be accommodated within the existing NICTS estate. Banbridge Courthouse which had been out of use since 2016, has been refurbished as part of the effort to increase

capacity for courts and tribunals cases and will also be available for civil hearings.

5. NICTS are currently engaging with the Public Health Agency and are currently completing an assessment which will be venue specific. Mrs Topping advised that the key message is nothing has changed. The Chair advised that he has received queries as to why hospitality venues and sporting events are operating within the one metre rule but courts are not, the Chair queried if there is a legislative basis for courts continuing to operate under the two metre social distancing rule.
6. Mrs Topping advised that there is no legislative basis for the two metre rule but that NICTS were basing their decision to operate under the two metre rule on PHA advice and good guidance. Mrs Topping advised that the aim was to minimise transmission and that to date NICTS had not had to close a court. Mrs Topping also advised the length of time someone would spend in a shop would be relatively short compared to the time normally spent in a courthouse. The Chair also referred to a crown matter which is due to be heard in Laganside Court Complex and junior counsel have been advised they will not be able to be present in court due to restrictions on numbers. The Chair clarified that it is one metre social distancing when mitigations are in place such as screening and two metres when there are none. Mrs Topping also advised that where possible screens will be erected and this would be considered as part of the venue specific assessment and will be kept under review. Mr McCollum added that more green ticks should be put in place and security staff should be advised that counsel are permitted to have discussions in the corridor and members of the public are allowed in the great hall. Mrs Topping advised that work is currently underway to review the green ticks in the courtroom and that security staff would be advised that where safe to do so counsel should be permitted to converse and that if the court had advised a member of the public to attend court they would be admitted to the great hall.
7. Master McCorry raised that at present hearings cannot take place in chambers due to poor ventilation. The Chair suggested that perhaps greater public awareness as to the reasons courts are running the way they are. Mrs Elliott advised that all courts are being utilised and this is reducing the backlog. The Chair noted that the backlog has been significantly reduced in respect of Queens Bench matters.
8. Judge Devlin noted that family courts had been moved into civil courts and this has resulted in larger cases not being able to proceed to hearing. Judge

Devlin also noted that case disposals had increased, to date 2400 civil bills have been disposed of, compared to 660 last year.

9. Mrs Elliott also noted that NICTS have advised that work on new leaflets is at an advanced stage and NICTS are continuing to work with Housing Rights and the Master regarding in person hearings. Mrs Topping advised a dedicated space in the RCJ for Housing Rights staff has been identified and this will provide better support and help to promote the service.

### **Litigants in person (LIP)**

#### **LIP Reference Group -update**

10. The Chair updated members that the Department and NICTS are continuing to support the development of supports through the Litigant in Person Reference Group. Work on the development of the Litigant Voice website to replace the LiP pages of the DoJ website is ongoing. The tools developed by the UU with funding from the Nuffield Foundation for LiPs in family proceedings have been subject to a soft launch and have been well received. The Chair advised that the website was very impressive and would be of great support to LiP's. The tools, which are available on the UU website, are expected to be formally launched soon. UU had hoped to test the support tools in live courts with users, the Chair advised that Professor McKeever had advised that if this was not possible the project might not succeed.
11. Mrs Topping advised that NICTS had so far identified 25 cases and hoped to be able to identify more. Mrs Topping asked if Professor McKeever identified any cases if she could advise NICTS. Mrs McAlpine confirmed that funding had been extended until March 2022.

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

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

12. The Chair advised there is a pending judicial review in relation to this matter, so this item will not be discussed.
13. The Chair advised that the Secretary to the Court Rules Committees is awaiting instructions from the DOJ for Rules to give effect to new supports for vulnerable witnesses in civil proceedings with the introduction of the Domestic Abuse and Civil Proceedings Act (NI) 2021. Mrs McAlpine advised that potentially some court rules will change and the Department will be advising the OLCJ, it is anticipated that a lot of legislation will be brought forward, at present work is under way in relation to family proceedings legislation.

14. The Chair referred to Practice Direction 1A which is in force in England & Wales and the intention that it could be brought in here. Mrs Elliott advised that Mrs McGrath is currently considering this.

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

15. Master McCorry provided an update on the work of the sub-committee. He advised focus to date has been on Clinical Negligence, Defamation and County Court.

#### **Clinical Negligence Pre-Action Protocol**

16. Following the presentation at the sCJC on 27<sup>th</sup> April by Patrick Mullarkey and Mark Harvey a targeted consultation was progressed by the Office of the Lord Chief Justice, which closed on 30<sup>th</sup> July 2021. Responses were considered, and referred back to the drafting group for clarification where required. The documents are currently being finalised and it is hoped they will issue imminently.

#### **Defamation Pre-Action Protocol**

17. The sub-committee on 24<sup>th</sup> May 2021 discussed proposals based on a paper prepared by Hugh McMahon. It was felt that a single PAP for defamation would be preferable, encompassing misuse of private information, breach of confidence and data protection. The inclusion of harassment, where the course of conduct complained of includes publication, was also considered with a degree of caution. The group are also considering the inclusion of a requirement that the plaintiff sets out whether the claim is restricted to damage to reputation in Northern Ireland or also outside the jurisdiction for completeness, as the plaintiff will be required to address the issue in any event at the stage of endorsing the Writ. A draft PAP for use in defamation proceedings is to be presented for consideration at the next meeting of the sub-committee.

#### **County Court Pre-Action Protocol(s)**

18. The sub-committee discussed issues arising from the 2013 PAP as an example of how practitioners can drift away from good practice in the absence of appropriate sanctions. Powers in respect of non-compliance were currently limited to after the issue of proceedings have been issued and an amendment to the Rules, would be necessary to address this. It was also noted that several PAPs in this area would be more appropriate than a single PAP due to the likely increase in both the complexity and value of claims. In the interim it was considered that encouraging adherence to the existing PAP may encourage levels of compliance while a long term solution is sought. A paper setting out the issues arising in respect of county court PAPs, the approach to

be taken and the number of PAPs required is to be drafted for discussion at the next sub-committee meeting on the 11<sup>th</sup> October 2021.

The Chair asked Master McCorry if he was content with the support he had on the sub-committee, Master McCorry advised that he was. Judge Devlin proposed that a representative from the County Court join the PAP sub-committee.

**Action: It was agreed that Judge Devlin would join the PAP sub-committee.**

### *Review of Practice Directions (PDs)*

19. Mrs McMurray updated members with progress to date following the first stage of the review, 104 practice directions were deemed obsolete and subsequently revoked by Practice Direction 1 of 2021 issued on 18<sup>th</sup> May 2021. The OLCJ Reference Library are working to update the electronic registers and have removed all practice directions deemed obsolete under PD 1/21 on the Judiciary NI website. Around 40 Practice Directions are being considered further to establish whether they are still applicable, require to be up-dated or should be revoked. Work is also progressing in tandem to revise internal procedures to ensure consistent application and issue of practice directions across the court tiers which we hope to consult on, following particular consideration by the LIP reference group to try to improve accessibility and understanding as highlighted by the Advisory Group. The Chair asked Mrs McMurray to pass on his thanks to those who had undertaken this arduous task.

### *Alternative Dispute Resolution and Mediation*

#### *Intra -Court mediation consultation*

20. The Chair updated members on the Departments consultation on intra-court mediation in non-family civil cases which ran from the 4<sup>th</sup> May to the 29<sup>th</sup> June. The consultation proposed protocols and arrangements for funding mediation in legally aided cases and considered including the remuneration and the hours to be allowed under a General Authority without prior approval; the controls as to when the General Authority may be deployed; the Protocols as to when the legal representative for the legally aided party should apply for prior authority for mediation from the Legal Services Agency and the accreditation of the service providers. A post consultation report on the way forward was considered by the Justice Committee on the 9<sup>th</sup> September and this was shared with members on the 15<sup>th</sup> September 2021. Mrs McAlpine advised members that it is anticipated that the General Authority will run from the start of November.

21. Mr Andrews advised that it will be managed on a case by case basis and anticipated that larger mediation cases may cause problems. Mr Andrews also confirmed that the costs would come out of the existing budget.

### *The County Court and Small Claims Court*

#### *Monetary Jurisdiction*

22. Mrs McAlpine updated members on the consultation to increase the financial jurisdiction of the County Court. Eighteen responses were received by the Department and these are being analysed before going to the Justice Minister. It is expected that the final proposals will be with the Minister sometime in November. The Chair enquired as to whether this would be a priority for the Minister, Mrs McAlpine advised it was not a top priority at the moment but perhaps the proposals in respect of the small claims court could be moved along faster as they would be more straightforward.

#### *Digitisation for & in court*

23. The Chair noted the technology improvements to court QB2. Mrs Topping advised she would pass this onto the ICT team and advised that the upgrade of the new courtroom technology continues with 53 courtrooms now completed including a further 6 courtrooms in RCJ, Laganside Ct 7 and Dungannon Ct 3 completing upgrades over the summer months. Wi-Fi is now available in all courtrooms.
24. To date 72 Sightlink licences and 20 WebEx licences are in operation, and an additional 30 Video Conferencing Units have been installed in courtrooms and tribunal hearing rooms to facilitate remote and hybrid hearings in all operational courtrooms across the court estate. Work has commenced with the Department to ensure live link powers that enable remote hearings to take place, contained in the Coronavirus Act legislation, are not lost should the legislation lapse in March 2022. The Chair advised that in relation to civil hearings there had been doubts that evidence given remotely was effective, but noted that remote evidence have worked well and the hybrid approach should be encouraged.
25. The Probate Online Portal went live on 14<sup>th</sup> June enabling applications for grants of probate and letters administration to be progressed. Uptake and feedback has been positive from public, solicitors and staff. As of 13<sup>th</sup> September, 314 applications have commenced on the portal 108 citizen and 206 solicitor and 210 applications have been completed 78 citizen and 132 solicitor. The portal is currently being expanded to enable the lodgement and extension of caveats via the probate portal. The caveat module is currently being developed and tested and is planned to be implemented by the end of September.

## Judicial Digitalisation Steering Group (JDSG)

### Electronic court bundles

26. Mrs Elliott provided an update on the e-bundles pilot and advised between April and June four cases were successfully piloted, two in the Family Division, one Commercial before Mr Justice Horner and one Chancery hearing before Mr Justice Humphreys. Initial feedback from the legal profession has been largely positive with a few minor issues which will be considered in guidance for future cases. Mrs Elliott advised that the main issues are mainly around timeliness and the ability to upload documents/instructions, yet most expect that with practice this would decrease. Mrs Elliott advised that detailed feedback is currently being considered, and the lessons learned will be applied to design a process for the continued acceptance of e-bundles where permitted for interlocutory and final hearings in the High Court, with further pilots being planned to test Caselines and Bundledocs in the coming term to help refine requirements for NICTS to consider a suitable technical solution in the medium term.
27. As requested at the last sCJC meeting, OLCJ has suggested that both the Bar and Law Society be invited to view demonstrations of both technical solutions at an early stage, to encourage the profession to take part in the pilots, and allow them an opportunity to consider potential for compatible case management systems in the future. Mrs Elliott explained that some issues around document transfer, storage, retention and disposal not available in the current case management system were still to be considered. Mr Andrews advised there is a judicial review currently pending before the courts around the release of documents under GDPR which may be of interest.
28. Mr Andrews advised there is a judicial review currently before the courts which may be suitable for the pilot. Mrs Elliott asked if the details of the case could be provided. The Chair queried if piloting cases in the County Court might be easier, Mrs Elliott advised that cases in the county court had been identified but settled prior to hearing. Judge Devlin suggested piloting statutory appeal cases as they have to run.

### Disability

29. The Chair advised members that Mr Fitzpatrick had updated the secretariat that there were no updates since the last meeting. The Chair confirmed that Sheila McGivern would attend the next meeting of sCJC. The Chair also advised members that at the recent Advisory Group meeting the representative for Ethnic Minorities also highlighted the need for consultation and DOJ EQIA's to be inclusive of all ethnic minorities and religions as well as disabilities. Mrs Elliott confirmed that this was more for the Department to take forward and suggested that Mrs McAlpine to speak to Mr O'Connor who

had attended the Advisory Group meeting. Mrs McAlpine confirmed she would speak to Mr O'Connor and that ethnic minorities are a separate issue. The Chair advised this would be added to the agenda for the next meeting.

**Action: Inclusivity of Ethnic minorities to be added to the agenda of the next meeting of the sCJC.**

*Personal Injury Discount Rates*

30. The Chair advised members that the Damages Bill is still before the Justice Committee which is due to finish its deliberations by end October. It is hoped the Bill will receive Royal Assent in early January 2022. Mrs McAlpine advised the committee had queried why damages were higher in NI. The Chair advised there is currently a matter before the court challenging the interest rate.

*Any Other Business*

*Amendments to the County Court Rules*

31. The Chair advised Mr McCollum had asked for this item to be added to the agenda. The Chair advised that even though the County Court rules do not provide for sanctions to be imposed, work on the PAP's should continue. Judge Devlin confirmed he was in agreement with this as were other members of the judiciary. The Chair advised that flexibility should be the key.
32. Mr Foster also updated members on the Defamation Bill which was before the Finance Committee on the 8<sup>th</sup> September 2021. The Bill is to be considered by the Committee again but at the moment one of the key changes is an amendment to section 62 (1) of the Judicature (Northern Ireland) Act 1978 removes libel and slander from the list of proceedings where a right to jury trial exists.

*Date of next meeting*

33. The date of the next meeting is **Thursday 9<sup>th</sup> December 2021 at 4:15pm.**