

SHADOW CIVIL JUSTICE COUNCIL

Minutes of the Eighteenth meeting of the shadow Civil Justice Council held on 8 May 2024 at 4.15 pm in the Judges Assembly Room and via Webex conferencing.

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)
Michael Foster (DoF)
Karen Ward (NICTS)
Maurece Hutchinson NICCY (Guest Speaker)
Robert Hunter (Guest Speaker)

Secretariat: Julie McMurray (LCJO)

Roisin McCabe (LCJO)

Catherine Di Maio (LCJO) (notetaker)

Welcome and Apologies

1. The Chair welcomed members to the meeting and took the opportunity to welcome to Maurece Hutchinson and Robert Hunter, attending the meeting to discuss the third item on the agenda Out of Court Settlements involving unrepresented minors.
2. The Chair noted that Liam McCollum had not attended and that he had indicated at the last meeting that he would not be the Bars representative at any further meetings.

Action Point: Secretariat to contact the Bar to confirm who the new representative is.

Minutes of the last meeting

3. The minutes of the 17th meeting of the Shadow Civil Justice Council on 17 January 2024 were agreed -for publication.

The Overriding Objective an efficient and timely process

Out of Court Settlements involving unrepresented minors

4. The Chair thanked Ms Hutchinson for preparing a presentation for members, which had been shared with members in advance of the meeting and invited Ms Hutchinson to open the discussion. Ms Hutchinson outlined the issues detailed in the presentation, noting insurers continuing to make pre-medical offers without legal protection during the pre-proceedings stage and that 22% of cases have been registered as having no representation. Ms Hutchinson noted that data is not being retained by the Department for Communities once a case has been dealt with and referred to the urgent need to implement recommendation CJ34 from the Gillen Review Ms Hutchinson discussed the support that the implementation of recommendation CJ34 had received from the Judiciary and the Justice Minister, which had been highlighted in the positive response to the DoJ consultation in 2021. Mr Hunter echoed the comments Ms Hutchinson had made and highlighted the issues in the relevant legislation and that the Gillen Review had also emphasised the need to legislate in this area.
5. The Chair thanked Ms Hutchinson and Mr Hunter for their comments and noted the urgent need to ensure that minors received a fair settlement and that any settlement would be protected by the court. Mr Fitzpatrick thanked Ms Hutchinson and Mr Hunter and advised the Law Society supported the recommendation which would provide protection for all the parties concerned. DJ Duncan queried if it was a disciplinary matter for solicitors to settle a case involving a minor without seeking court approval. Mr Fitzpatrick advised it was not but would take the comments back to the Contentious Business Committee who would refer it to the Council.
6. Mr Dawson advised that he was due to have a meeting with the Justice Minister and would discuss the issues raised today with her at the meeting. The Chair urged the DoJ not to lose sight of this issue and the urgent need to pass the legislation to implement CJ34.

Protocol for Personal Injury and Damage only Civil Litigation Actions

7. Master Harvey advised that a working group had been established chaired by Brian Fee KC to review the existing Personal Injury Protocol. The working group met on three occasions and have finalised a draft which has also been reviewed by the Sub-Committee and has been shared with members in advance of todays meeting. Master Harvey placed on record his thanks to the members of the working group and asked members to approve the issue of the Protocol for targeted consultation. Members agreed that the Protocol could issue for targeted consultation. The Chair recorded his thanks to the working

group and noted that the Protocol was comprehensive and would assist in ensuring the overriding objective is met.

Action Point: Secretariat to arrange for the Protocol to issue for targeted consultation.

Protocol for the Participation of Vulnerable Parties or Witnesses in Civil Litigation

8. Master Harvey provided an update on the Protocol which had been drafted by members of the Sub-Committee on Pre-Action Protocol and recorded his thanks to Alison Cassidy and Colin Mitchell for their work in preparing the draft. Master Harvey explained that the draft had considered the Practice Direction which operates in E&W and asked members if they agreed the Protocol could be issued for targeted consultation. The Chair also recorded his thanks to the sub-committee members and noted the importance of identifying vulnerability and enabling parties to participate meaningfully in litigation. DJ Duncan queried the use of Registered Intermediaries and if they were available in civil courts. Master Harvey confirmed that the up-to-date position regarding Registered Intermediaries was clarified with the DoJ and the Protocol had been drafted to reflect that. Members agreed that the Protocol should be issued for targeted consultation.

Action Point: Secretariat to arrange for Protocol to be issued for targeted consultation.

Business Continuity, Recovery and Modernisation

LCJO Operational Update

9. Mrs Maclam updated members on the current statistics which were available which covered the period October to December 2023 and noted that civil business is still on a recovery trajectory and moving back to pre-pandemic levels. Mrs Maclam suggested that it may be more beneficial to obtain statistics for a wider period than quarterly and members agreed it would provide a more comprehensive picture. Mrs Maclam noted the only concern within the stats was the figures for Chancery which had remained high and that they would continue to be monitored.

Vision 2030: Judicial Advisory Group

10. Mrs Maclam advised members that the next meeting of the Advisory Group is taking place on the 9 May 2024.

E-Bundles

11. Mrs Maclam advised that the Lady Chief Justice continues to encourage the use of e-bundles and advised that one of the challenges is the recording of e-

bundles for monitoring purposes and that feedback on the process had been requested from the professions, but none had been received. The Chair noted that when an e-bundle is directed hard copies are also lodged and suggested for the e-bundle pilot to be successful the practice of also lodging hard copies should stop. Mrs Ward advised that e-bundles would form an integral part of the new Themis system and that NICTS were due to meet with officials from the Supreme Court to understand their processes and would ensure that any learning was shared with the Council. Master Harvey noted the figures for the number of e-bundles received and advised this was not reflective of the number he had received in Kings Bench.

Service Modernisation Programme Update

12. Mrs Ward updated members on the Themis procurement process and noted that NICTS are on track to be able to award a contract in August and suggested that it may be beneficial once a supplier had been chosen that they attend a meeting of the council, the Chair agreed that would be helpful. Mrs Ward explained that the sightlink contract is due to end next year and work is continuing to find a replacement and that engagement is continuing with the professions and the LCJO as well as other jurisdictions to ensure that all requirements are met.

Estates Programme Modernisation Update

13. Mrs Ward provided an update on the states modernisation project and advised that a procurement document had been prepared in relation to the North West project and that NICTS are currently awaiting a budget. The Chair queried when it was anticipated that the decant of the RCJ would happen and Mrs Ward explained that NICTS are currently looking at decant solutions involving different locations which would include the Old Townhall, Laganside Courts, Laganside House and accommodation within the AIB building. Mrs Ward advised that NICTS are continuing to engage with the LCJO and proposals are being finalised and will guide the work of the design team.

Litigants in Person

14. Mr Dawson advised that the terms of reference of the LiP RG has been revised to reflect the Assembly being in place and the position of each member to comment on different consultations. Mr Fitzpatrick noted that Mr Allamby had attended a meeting of the Contentious Business Committee and had delivered a presentation which had been well received. Mr Fitzpatrick also confirmed that the new Law Society Representative on the LiP RG was Simon Chambers.

McKenzie Friends

15. Ms McCabe advised members that the revised Practice Note and Code of Conduct had been updated taking into account consultation responses and the inclusion of an addendum to reflect the additional requirements in respect of family cases and a glossary of terms. The Chair recorded his thanks to Lord Justice McCloskey who had assisted in the drafting of the revised Practice Note and Code of Conduct and confirmed that members were content with the drafts and subject to final checks could be referred to the LCJ for final issue.

Action Point: Secretariat to arrange for the Revised Practice Note and Code of Conduct to be issued.

Alternative Dispute Resolution

16. Mr Dawson advised that the DoJ is continuing to work with the commercial consortium (now named TalkTerms) who hope to lead an online dispute resolution pilot to scope a potential operating model. It remains the intention that the pilot will operate outside the court system but capture disputes which would ordinarily fall within the jurisdiction of the small claims court. Mr Dawson also updated members that the General Authority to allow mediation in non-family cases without the prior authority of the Legal Services Agency continues to operate, as does the provision for prior authority if the LSA agrees to a higher rate or additional hours. An evaluation of the General Authority is ongoing, Mr Andrews noted that uptake had not been significant.

The County Court and Small Claims Court

17. Mr Dawson updated members that a substantial piece of work had been carried out by the DoJ with options for the jurisdiction of the County Court and it would be shared with the Justice Minister for consideration. HHJ Gilpin noted that the issue of the Green Book had created a further need for the urgent review of the jurisdiction of the County Court.

Outstanding Recommendations Report

18. Ms McCabe referred members to the outstanding recommendations report on Chapter 16 of the Gillen report the County Court, District Judges Court and Small Claims Court chapter and asked if members agreed with the report that the identified recommendations had been achieved and could formally be marked as completed.

Action Point: Secretariat to mark the following recommendations as completed CJ146, CJ148, CJ149, CJ150, CJ151, CJ152 and CJ147 is to be recorded as not considered necessary.

Experts

19. Master Harvey updated members that the Guidance for the Instruction of Experts in Civil Litigation had been updated taking into account the

consultation responses received and that subject to final checks would be shared with the LCJ for final sign off if members were content. The Chair confirmed that members agreed that the draft should be issued.

Action Point: Secretariat to make arrangements for the guidance on the Instruction of Experts in Civil Litigation in the High Court to be issued.

Disability

20. The Chair noted that Ms Toman from Disability Action had attended a meeting of the sCJC on the 8 March 2023 and that it had been agreed at that meeting that Ms Toman would submit a training proposal to the Judicial Studies Board but that this was outstanding. Mr Fitzpatrick added that Disability Action had been due to contribute to a CPD event and provide an article for the Writ but there had been a period of non-engagement, but that the article for the Writ had now been provided. Mr Fitzpatrick advised that Disability Action had issues with funding and had also been engaged at the Covid Enquiry which may account for their period of non-engagement.

Artificial Intelligence

21. The Chair referred to a speech delivered by Sir Geoffrey Vos in respect of AI and asked Mrs Ward to give an update on any plans to incorporate AI into the Themis system. Mrs Ward advised that the experience of the market was that suppliers are keen to utilise AI but not within the realm of decision making. Mrs Ward noted that NICTS would approach AI with caution but would be beneficial to explore how AI could provide an aid.

Kings Bench Update

22. Master Harvey provided an update to members on Kings Bench business noting that the summons court return has been a success generating a lot less emails and less admin for the court office and practitioners. It has also enabled a quicker turnaround of summons, more control over listing and provides a training ground for new counsel and solicitors, it also facilitates discussions between the parties and can result in the settlement of disputes, if not the entire action. Master Harvey advised that he deals with around 150 summonses and ex parte applications per month.

23. Master Harvey confirmed that case management review hearings continue in person on Thursdays and there is a high volume of reviews and in addition many issues are also being dealt with administratively. The summons court is moving to Friday 10am which had previously been at 11.30am and some contested hearings will be listed on a Friday and will require in person attendance. An updated guidance note is being issued to practitioners. Master Harvey also noted that Quarterly reports he has commissioned from the court

service statisticians assist in identifying any issues or patterns and make sure contests, reviews and business generally is managed efficiently and effectively.

Review of Protocol for Clinical Negligence Litigation in the High Court

24. The Chair referred to the report received by the Law Society which set out members comments on the Clinical Negligence Protocol for the High Court. The Chair noted the responses were very mixed and Master Harvey suggested it may be beneficial to enquire what the response rate was and suggested the best way forward would be to engage directly with the Clinical Negligence Practitioners Group (CNPG). Mr Fitzpatrick advised the survey had been mentioned at the Contentious Business Committee meeting and he thought the response rate had been low. The Chair asked if members agreed that the CNPG should be invited to provide feedback to the Council which would then be shared with the Sub-Committee on Pre-Action Protocols for consideration and members agreed with this approach.

Action Point: Secretariat to invite the CNPG to provide a review on the Protocol for Clinical Negligence Litigation in the High Court.

Determining Mental Capacity in Civil Courts

25. The Chair advised members the sCJC were maintaining a watching brief on the Civil Justice Councils working group on determining mental capacity. The working group issued a consultation on the 15 December and also held a seminar on the 1 March 2024 to discuss the consultation and a summary of that seminar was shared with members in advance of the meeting. The Chair noted that there had been a recent judgement in the Court of Appeal in Northern Ireland setting out the steps the Tribunal must take in respect of determining mental capacity.

Hague 2019

26. Mr Dawson advised members that the UK Government signed the Hague 2019 convention on 12 January 2024 and a targeted consultation was undertaken by the UKG with key stakeholders including the Law Society of NI and the Bar library in January 2024 and some technical amendments to the operation of Hague 2005 were identified. Mr Dawson advised the technical changes include any challenge to a registered judgment under Hague 2005 to be by way of a set aside application as opposed to a current procedure by way of appeal. Mr Dawson said the Justice Minister has agreed that regulations to implement Hague 2019 should also include these technical amendments to Hague 2005 procedure in NI. The UKG continue to draft the regulations and preparatory work is ongoing with regard to implementation of the convention in NI.

Order 24 of the County Court Rules

27. HHJ Gilpin updated members on this agenda item which is in relation to recommendation CJ220 in chapter 20 of the Gillen report on licencing which is “Experts to be directed to exchange reports.” HHJ Gilpin said that the common approach is cards on the table but at the moment this doesn’t seem to apply to licencing and the implementation of this recommendation would assist in addressing that. The Chair noted that licensing cases should apply with the standards of openness and transparency and commercial interests should not override that principle and asked if members agreed the request for CJ220 to be implemented by way of a change to the County Court Rules be passed to the County Court Rules Committee, members agreed that the request for a change to the County Court Rules should be sent to the County Court Committee secretariat.

Action Point: Secretariat to share request for CJ220 to be implemented by way of rules change to the County Court Rules Committee secretariat.

Review of Personal Injury Discount Rate

28. Mr Dawson provided an overview on the Department of Justice response to the consultation on the parameters for the 2024 review of the personal injury discount rate for Northern Ireland on the 26 April 2024. Mr Dawson advised that two changes are proposed which include that the rate should be changed to the Average Weekly Earnings Rate as the use of the RPI rate will no longer be possible after 2030 and the rate will also change from 1.75% to 1.25%. The Chair noted the importance of replacing the formula for calculating the rate at this stage and that the removal of the RPI rate does not impact on future reviews of other rates.

Review of Civil Legal Aid

29. Mr Andrews provided an overview on the review of civil legal aid and noted that a review of criminal legal aid is ongoing and the Enabling Access to Justice Department are taking forward a review of Civil Legal Aid. Mr Andrews encouraged members to take part in the DoJ’s call for evidence as there had not been a legal needs survey since 2006 and the call for evidence would help inform next steps. The Chair noted the importance on carrying out a review of civil legal aid and the importance of ensuring that there is value for money and recognising that there is a limited legal aid budget. Mr Andrews advised there is a separate stream of work being undertaken by the DoJ to consider the recommendations made by the Public Accounts Committee in relation to the reform of the Taxation process and that this is ongoing and the DoJ is engaging with the Taxing Master and her office.

Next Meeting

30. It was agreed that the next meeting would take place on the 6 November 2024 at 4:15pm.