

SHADOW CIVIL JUSTICE COUNCIL

**Minutes of the Fifteenth Meeting of the shadow Civil Justice Council held on
8th March 2023 at 4.15 pm via WebEx video conferencing and in person.**

Attendees: Mr Justice McAlinden (Chair)
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)
Nuala Toman (Disability Action) Guest Speaker

Secretariat: Julie McMurray (LCJO)

Catherine Di Maio (LCJO) (will take note)

Welcome and Apologies

1. The Chair welcomed everyone to the meeting and thanked members for their attendance. Apologies were noted from Master Harvey, Karen Ward, Elaine Topping, and Liam McCollum. The Chair extended a warm welcome to Debbie Maclam who will now be the representative for the Lady Chief Justice's Office. He also placed his thanks on record to Mandy Kilpatrick for all her work as a member of the Shadow Civil Justice Council (sCJC) and within the Lady Chief Justice's Office. The Chair welcomed Andrew Dawson to the meeting. Andrew replaced Laurene McAlpine as the representative for the Department of Justice. The Chair placed on record his thanks to Laurene for all her work as a member of the sCJC. The Chair also welcomed HHJ Gilpin to the meeting who has replaced HHJ Devlin. Thanks to HHJ Devlin were recorded for all his work as a member of the sCJC and the Sub-Committee on Pre-Action Protocols.

Minutes of the last meeting

2. The minutes of the 14th meeting of the Shadow Civil Justice Council on 8th December 2022 were agreed and will be published in due course.

Disability

3. The Chair extended a warm welcome to Nuala Toman from Disability Action who attended to update members on issues contained within Disability Action's report entitled Progress Towards the Implementation of the UNCRPD in Northern Ireland. Ms Toman provided an overview of the issues which people with disabilities encounter when navigating the justice system. Ms Toman outlined the challenges those with mental health difficulties face when interacting with government bodies, such as dealing with the phraseology of the different departments and said that less written communication would assist those with mental health difficulties access public services more easily. The Chair added that it was important to identify these issues at an early stage of the case management process. Ms Toman noted that the discrimination laws in Northern Ireland are out of sync with the rest of the UK. Ms Toman also raised the shortage of British and Irish sign language interpreters and said the withdrawal of one company's services would have a detrimental impact on those with hearing difficulties attending court. The Chair asked if training for all service providers including the Judiciary would be of benefit, Ms Toman advised that Disability Action had recommended training for all service providers. The Chair suggested it may be useful if Ms Toman corresponded with NICTS on the issue of further training. Ms Toman discussed the physical layout of buildings and commented that whilst a building may have been considered DDA compliant 20 years ago this may not be the case today. The Chair enquired whether Disability Action had ever been engaged in auditing NICTS estate in terms of access, Ms Toman advised that this is a service Disability Action provide but was unaware of ever having been requested by NICTS to audit the estate. The Chair suggested that Disability Action may wish to engage directly with NICTS.
4. Mr Foster noted the interesting points that Ms Toman raised and advised there was a lot that should be taken on board. Ms Toman discussed the Mental Capacity Act 2016 and noted that the non-commencement of certain parts of the Act is an issue but that the main issue is Disability Action's assertion that the Act does not comply with the UNCRPD. The Chair acknowledged that the UNCRPD has a different view on how to deal with impairment of capacity, but that NI are bound by UK law. The Chair said that the delay in full implementation of the Mental Capacity Act is causing issues. Mr Dawson agreed and advised that officials in the Departments of Health, Justice and Finance are currently considering the outstanding issues and are keen to make progress, although this will be subject to additional funding required and the development of subordinate legislation, both of which will require the return of ministers.

5. Mr Fitzpatrick thanked Ms Toman for the update and offered to bring the issues surrounding communication with litigants to the Contentious Business Committee. Ms Toman welcomed this suggestion and outlined the challenges that litigants in person face in understanding court processes and sometimes the difficulties with securing representation if they do not qualify for legal aid. Mr Fitzpatrick suggested that he could propose that a meeting could take place between the Law Society and Disability Action regarding pro-bono work. Ms Toman said this would be a positive step and perhaps consideration should be given as to what role the PILS Project could play.
6. The Chair thanked Ms Toman for her presentation to members and asked if she had had any engagement with the Litigant in Person Reference Group. Ms Toman advised that she had not but had signed up for the webinar which the Litigant in Person Reference Group had arranged to take place on the 13th March 2023. The Chair advised that he would like to suggest to the Litigant in Person Reference Group that Disability Action be invited to join the group and said he would mention this to the Chair, Les Allamby. Ms Toman advised that Disability Action would welcome the opportunity to be represented on the group. District Judge Duncan also thanked Ms Toman for her presentation and asked if Disability Action provide general advocacy to applicants. Ms Toman advised that they receive funding from the Southern and Western Health Trusts to provide advocacy to those with mental and physical disabilities but they do not act as McKenzie Friends. Ms Toman concluded by adding that Disability Action had been accepted as core participants in the COVID-19 inquiry, the Chair welcomed this update and thanked Ms Toman for attending the meeting and for the informative update.

Action: Ms Toman to write to NICTS regarding training for the Judiciary

Action: Ms Toman to engage with NICTS in relation to auditing NICTS estate in terms of access.

Action: The Chair to seek approval from the Litigant in Person Reference Group for Disability Action to join the group.

Action: Mr Fitzpatrick to discuss issues of potential pro-bono work and communication issues identified by Ms Toman to the Contentious Business Committee.

Business Continuity, Recovery & Modernisation

Lady Chief Justice's Office (LCJO) Operational Update

7. Mrs McMurray provided an update on behalf of the LCJO and advised that the [guidance](#) which issued on the 22 June 2022 remains unchanged at this point and social distancing of 1 metre remains in place. The Chair asked members for their comments on the 1 metre social distancing and if in their

experience it was still being adhered to. District Judge Duncan advised that the limits on the number of persons allowed in court at one time was still being adhered to but once in the courtroom the 1 metre rule was not being followed. Mrs McMurray advised that there will be a review of the guidance and it is hoped that there might be revised guidance issued in April. The Chair asked that the views of members be fed back to those involved in the review of the guidance. Mr Fitzpatrick added that he felt the guidance wasn't being followed and at this stage is unnecessary. The Chair noted the detrimental impact the guidance was having on business recovery. Mrs McMurray agreed to feed back these comments to those undertaking the review.

8. Mrs McMurray discussed the figures for October to December 2022 for civil business in the High Court and noted that the disposal of writs and summonses were 65% higher than the same quarter in 2021, the number of writs received had also increased by 15% compared to the same quarter in 2021. Mrs McMurray noted that the figures for the County Court for the period October to December showed no consistent pattern, it was notable however that the number of small claims disposed of had risen by 21% compared to the same quarter in 2021.

Action: Secretariat to feedback members views on current guidance to NICTS.

Judicial Modernisation Update

Vision 2030: Judicial Advisory Group

9. Mrs McMurray updated members on the progress of the Judicial Advisory Group and noted at our last meeting we had informed the Council that a Judicial Advisory Group chaired by Mr Justice Huddleston had been formed. The Group's aim is to inform and advise the Courts and Tribunals Service of the operational judicial modernisation requirements across all court tiers and business types; and to help give effect to the supporting culture and practice change within the wider judiciary and legal profession. The Group has agreed that small sub-groups would be formed from the overall membership to focus on particular business areas, which may be taken forward simultaneously. Mrs McMurray outlined that sub-group 1 dealing with 'Civil Pre-Court Action and Case Initiation' has now met twice and is considering: judicial information requirements for online case initiation and progression; appropriate promotion/signposting of alternative resolution options or initiatives using an online portal; potential for e-service and digital signatures, and management information useful to the judiciary. The Chair added that it was important for the new system to be linked with the Legal Services Agency system, Mr Andrews agreed and advised that at present it is difficult to match up civil cases with legal aid claims and that this has been discussed with Mrs Ward. Mrs McMurray informed members that LCJO issued a survey to

judiciary on 1 March on the use of e-bundles. The experiences of judges will help inform the Lady Chief Justice of progress made to date and identify any action needed to encourage or extend their use to other court tiers. The survey should take no more than 10 minutes and should be completed by Friday 10th March 2023. The Chair advised members that he had completed his survey and encouraged all those invited to complete one to do so.

Operational Modernisation Update

Digital Programme

10. Mrs McMurray read out the update provided by NICTS in the absence of a NICTS representative. The main focus of the team has been to finalise the high level specification requirements for our Future Core Solution in readiness for the procurement launching late Feb / early March. Significant work has been undertaken by the team and stakeholders to identify and review these. A discovery exercise on scope for delivery of improvements to the Enduring Power of Attorney Process will conclude at the end of March and the report produced by the team will be used to inform next steps. In the meantime, testing and data migration activities continue in relation to the new Case Management System for the OSO / OCP and the outcome of this work will inform the final implementation date. Work is also ongoing to prepare the delivery plans for the incoming financial year – these plans must balance up business priority requirements with staff and financial resources available to the team. One of the priorities for the incoming year is how to deliver improvements to the technology used for remote and hybrid hearings. The team will scope out potential options and will develop a business case to progress this during the 2023/24 year. The overall plans for the 2023/24 year will be shared and discussed with the Vision 2030 Portfolio Board and the LCJ in advance of finalisation. In parallel, discussions are ongoing with our technical equipment supplier to consider improvements that can be made to camera angles to increase visibility of participating parties during remote and hybrid hearings – any changes will be subject to feasibility and affordability

The NICTS Research into Remote Technology

11. Mrs McMurray read out the update provided by NICTS in the absence of a NICTS representative. The NISRA report was published on the NICTS website in early December 2022 and a fuller response to the findings will be included in the associated DoJ Consultation response, which will be published in the near future.

Estates Programme

12. Mrs McMurray read out the update provided by NICTS in the absence of a NICTS representative. Work has continued on the development of the Outline Business Case for the RCJ Services Infrastructure Project and internal review and scrutiny of the OBC is underway. It is anticipated that the approval process will conclude by late summer. The North West Accommodation Project's strategic review is underway and a workshop with NICTS SMT will be held in coming weeks to agree next steps. SIB has been engaged to facilitate the Estate Strategy Advisory Group and invitations for nominations from key stakeholder groups will issue during March. It is envisaged that 4 workshops will take place between April and June to consider the proposed strategic outcomes, to identify success measures and to discuss planned steps to develop delivery plans.
13. Mrs McMurray also read out the update on behalf NICTS on the issue of the Chancery witness boxes which was raised at the last meeting of the sCJC on the 8 December 2022. At present the witness box in the Chancery court does not allow expert witnesses to give evidence concurrently due to there only being one witness box which, NICTS have advised that this issue is being considered by Estates as part of the wider RCJ infrastructure project, although there is no guarantee that physical changes could be made as part of that project. The Digital team will also be taking forward a work programme commencing in 2023/24 to look at how the current functionality of Sightlink (and similar) can be enhanced, which will take some time. Whilst there may not be an immediate fix the issue will be considered from both an estates and digital perspective as the different workstreams explore the feasibility of having more than one screen view available.
14. The Chair added that he has experienced issues with sightlink in the Nisi Prius courtroom, explaining that those appearing on sightlink cannot see those in the courtroom and the positioning of some of the microphones also made it difficult to hear. Mrs McMurray advised that she would pass on the comments to NICTS. HHJ Gilpin enquired if there was any further update in relation to work on the Old Town Hall building, Mrs McMurray confirmed that she would seek an update from NICTS. The Chair also raised the issue of the screens which were still in the courtroom and the difficulty this was creating in being able to hear those in court, Mrs Maclam advised she understood this would be included in the overall review which is due to be undertaken in the Spring. Mrs Maclam also advised that the new Future Core Solution would be known as Themis.

Action: Mrs McMurray to raise issues of sound and sightlink in Nisi Prius courtroom with NICTS.

Action: Mrs McMurray to seek an update from NICTS in relation to the Old Townhall building.

Litigants in Person

LIP Reference Group

15. Mr Dawson updated members on the work of the Reference Group which is continuing to focus on improving the experience of LiPs in family proceedings and contributing to modernisation and reform initiatives but interest and concern about the role of McKenzie Friends and consistency of approach to them remains a matter of interest to LiP members. The Group is due to host a webinar on the 13 March 2023 on enabling effective participation of unrepresented and vulnerable litigants. HHJ Karen Walden Smith Circuit Judge Member of the Civil Justice Council for E&W is the key speaker. Members of the profession and the judiciary are to be invited to attend. A CPD point is available. The Chair advised members that Mr Dunlop from the Judicial Studies Board also attended the last meeting of the Reference Group and provided very informative training in relation to Litigants in Person. The Law Society issued an e-informer last week to highlight the event. Work is ongoing on an MOU following the Department's agreement to fund maintenance of the tools developed by Ulster University for LiPs involved in family proceedings. The Chair commented on the excellent quality of the product and said that DoJ funding had enabled a good service to continue

The overriding objective: an efficient and timely process

Out of court settlement of cases involving unrepresented minors

16. Mr Dawson 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 in the first 6–8 months after the Assembly returns. This would provide for all cases involving a minor to be required to come to court for approval of the proposed settlement. The Chair noted the significant progress that had been made to date and thanked the Department for all their efforts.

Pre-Action Protocols (PAP's)

17. The Chair advised that the following pre-action protocols for the County Court were issued on the 6 February 2023 Commercial Actions, Personal Injury and Damage only Road Traffic Accident Claims, Ejection Proceedings. It is hoped the Clinical Negligence Pre-Action Protocol and Practice Direction will issue in the next few weeks. The Chair asked members if they had any

comments to make on the operational impact of the Pre-Action Protocols which had issued to date. HHJ Gilpin advised that it would be a while before the impact of the protocols would be noticed and that whilst the protocols would be of benefit there is no possibility to impose sanctions for non compliance. DJ Duncan advised that the only option in relation to sanctions is to award costs on an interlocutory application.

Review of Personal Injury Pre-Action Protocol and Practice Direction

18. The Chair updated members on the review of the Personal Injury Pre-Action Protocol and Practice Direction. Nominations have been received from the Bar and Law Society and it is hoped this review will commence after Master Harvey's return.

Review of Practice Directions

19. Mrs McMurray advised members that the review of Practice Directions is ongoing, it is hoped that a further consultation in relation to potentially obsolete practice directions will issue to stakeholders after the Easter Recess. Mrs McMurray added that enquiries were also underway to see what changes could be made to the way Practice Directions are available on the website and if there is an easier way that they can be searched.

Alternative Dispute Resolution and Mediation

20. Mr Dawson provided an updated on the commercial consortium leading the online dispute resolution pilot (Consumer Code for Online Dispute Resolution (CCODR)). Work is continuing to identify potential funding streams to allow a trial involving cases which would normally fall to the small claims court. DJ Duncan asked if there were any more details on the CCODR, Mr Dawson advised that he would revert to members with more details.
21. Mr Dawson updated members on the General Authority which launched to allow mediation in non-family cases without the prior authority of the Legal Services Agency. He said an early stage evaluation is in train. The Chair enquired with Mr Andrews if there was any further update from Legal Services, Mr Andrews advised that there was no further update at the moment.

Action: Mr Dawson to provide some further detail on the CCODR

County Court and Small Claims Court

22. Mr Dawson advised that there was nothing further to report since the increase to the small claim's jurisdiction to £5k in October 2022. The other changes to the County Court will have to be dealt with in longer time given the resource

implications. The department has also noted that it is likely that primary legislation will be required before clinical negligence cases can be removed from the general civil jurisdiction. The Chair asked DJ Duncan if he had anything to report on the effects of the increase to date. DJ Duncan reported that he had noticed an increase in more complex small claims cases coming before the court, in particular claims in respect of building works which are not suitable for the small claims court. DJ Duncan added that claimants are encouraged to take cases through the small claims courts as there are no costs, DJ Duncan advised that at times he has had to warn parties that the matter may be transferred to the County Court when parties become intransigent. HHJ Gilpin advised that the situation should be monitored as there would be resource implications if the situation continues, DJ Duncan advised that he has already had to increase small claims sitting days to two days per week to deal with the increase in cases. The Chair asked DJ Duncan to provide some statistics on the number of cases that he deemed not suitable for the small claims court. The Chair asked HHJ Gilpin if he had any comments on the operational impact of the proposed County Court increase. HHJ Gilpin advised this would require resourcing to be addressed, as County Court Judges were under pressure dealing with crown matters. He suggested a more modest inflationary increase might be more appropriate. In response to a query, Mr Dawson advised that he would enquire as to whether that increase would require primary legislation.

Action: DJ Duncan to provide statistics on the number of cases unsuitable for the small claims court.

Action: Mr Dawson to enquire as to whether an inflationary increase to the County Court would require primary legislation.

McKenzie Friends

23. Mrs McMurray advised members that scoping work in relation to Sir John Gillen's recommendations on McKenzie Friends can be progressed has commenced and a further update will be available at the next meeting.

Experts

24. Mrs McMurray advised members that work had also commenced to consider recommendations in respect of Experts and a further update will be available at the next meeting.

Next Meeting

25. It was agreed the next meeting of the Shadow Civil Justice Council would take place on the 13th September 2023 at 4:15pm.