

SHADOW CIVIL JUSTICE COUNCIL ADVISORY GROUP

Minutes of the Fourth Meeting of the shadow Civil Justice Council (sCJC) Advisory Group held on 19th August 2021 at 2.00pm via WebEx video conferencing.

Attendees: Mandy Kilpatrick (Chair, PPS to LCJ)
Mark Goodfellow (NICTS)
Eamon O'Connor (DoJ)
Glenn McKendry (NFU Mutual/ABI)
Les Allamby (NIHRC)
Patrick YU (NICRE)
Alastair Ross (ABI)
Alison Cassidy (DAC Beachcroft)
Maurece Hutchinson (JMK Solicitors/NI Coordinator of the Association of Personal Injury Solicitors)
Professor Grainne McKeever (Ulster University)
Dr Lucy Royal-Dawson (Ulster University)
Janet Hunter (Housing Rights)
Ursula O'Hare (Law Centre NI)
Kim Elliott (OLCJ)
Julie McMurray (OLCJ)

Secretariat: Catherine Di Maio (OLCJ)

1. The Chair welcomed everyone to the meeting and thanked the members for their attendance.

Apologies

2. Apologies were received from Karen Ward, Michael Murray and Scott Kennerley.

Minutes of the Meeting 2 December 2020

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

Covid-19: Business continuity and recovery

4. The Chair reported that business is continuing to run remotely, but with in-person hearings increasing where appropriate in line with PHA guidance and social distancing requirements. Changes have been made to the guidance on the JudiciaryNI website with particular regard to attendance at court, and will be updated as restrictions are further relaxed.

5. The OLCJ have worked with judges to re-allocate all courts scheduled pre-Covid-19 within the available courtrooms and NICTS have developed new weekly management information reports which have shown an increase in the number of disposals as courts have extended. However the court process will inevitably be slower as the backlog is dealt with and business is mainly transacted remotely, and the capacity for in-court hearings remains significantly reduced due to social distancing requirements.

6. Mr Goodfellow advised business recovery remains a priority and reported that in 6 months the backlog of cases was reduced by 60%. He noted that disposal rates will increase after recess and advised that two additional Crown venues have been identified one in Dungannon and the other in Coleraine, which will assist in further reducing the criminal court backlog.

Mr Goodfellow noted that social distancing will continue to constrain further progress and will affect bringing in additional staff, noting that every space has already been utilised.

Mr Goodfellow said that he had met with the Public Health Authority the previous week and they had been very clear that there was no scope to remove any further restrictions. He also reported staff pressures with 27 vacancies at Court Clerk level which are currently being filled through temporary promotions and redeployment. Mr Goodfellow added that these pressures would continue until at least the autumn and together with social distancing it would have an impact on business recovery.

The Chair advised that the LCJ is supportive of maintaining the 2 metre rule and noted that as people will still be required to attend court it is important to get the hybrid model right.

7. Ms Hutchinson reported that she and other solicitors in her practice had found that the ICC had worked very well and had felt safe when attending court hearings in the ICC.

Mr Goodfellow acknowledged that the ICC had worked well but unfortunately the lease is due to expire on the 3 September 2021 and cannot be renewed. Negotiations are being taken forward by Mrs Ward's team to establish if the ICC could be used twice a month for jury empanelment. Mr Goodfellow said that the Law Society had helpfully offered some consultation space.

The Chair noted that consultation space is a challenge across the court estate and the LCJ has raised this as an issue.

8. Mr Allamby queried what lessons had been learnt from the pandemic.

The Chair advised this would be addressed at item 8 but that Judges had been able to deal with more matters administratively and the service had become more forward thinking.

Mr Goodfellow concurred with this and added that NICTS had been able to fast track a lot of things that had been in the pipeline prior to COVID, particularly around the use of technology. He said that staff had adapted really well to new ways of working.

9. Mrs Hunter also asked the group to note that the Housing Possession Duty Scheme would remain suspended. After discussions with Judge Brownlie it was felt there was no other alternative with the current restrictions in place.

Litigants in Person (LIP)

10. Professor McKeever updated members on the work undertaken by the reference group to date to create online support material for litigants in person. A website has been created and it is hoped that a live launch will take place. A pathfinder tool is also available.

Professor McKeever added that the group had hoped to be given access to courts in order to test the website with court users, however if this was not possible it will be tested through separate groups. Professor McKeever gave an update on a report on the effects of COVID in family courts. It was noted that there were many lessons to learn and issues had been identified that not everything could be done online. A report entitled "Understanding the impact of COVID-19 on tribunals" concluded that WebEx type platforms are less reliable than commercial platforms. Professor McKeever also acknowledged that input from Court Service staff had been very helpful.

The Chair advised that the court of appeal team had also conducted a survey into the time spent assisting litigants in person.

The overriding objective: an efficient and timely process

Out of court settlements of cases involving unrepresented minors

11. The Chair noted that this consultation launched on the 7th July 2021 and is due to close on the 24th September 2021, once the consultation outcome is published members can be further updated.

Pre-Action Protocols (PAPs)

12. Mrs Elliott advised the group that a sub-committee under the Chair of Master McCorry has been established to take forward this recommendation, drafts will be issued for consultation. She confirmed that defamation is a priority

and the sub-committee are also looking at a single use pre-action protocol which would include harassment in the protocol.

Professor McKeever expressed an interest in the work of the sub-committee and Mrs Elliott advised that while these initial stages focussed on engagement with legal representatives that she would alert the Group to the offer of assistance.

Action: Mrs Elliott to share a draft with the group.

Review of Practice Directions

13. Mrs Elliott advised that a review of the existing practice directions took place and identified 104 practice directions issued between 1959 and 2012 that were deemed obsolete and subsequently revoked by Practice Direction 1 of 2021 issued on the 18th May 2021. The OLCJ Reference Library are working to update the electronic registers and search facilities available on the Judiciary NI website. Mrs Elliott advised that the second stage of the review will consider around a further 40 Practice Directions 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 and the intention is to consult on this early next term. These consultations will be shared with the Advisory Group and LIP reference group chair.

Professor McKeever advised that they are currently looking at a text to assist LIP's in relation to practice directions shared with them by the OLCJ and will provide comments in due course

Mrs Elliott confirmed that the intention, going forward, is that practice directions will be more LIP friendly.

Action: OLCJ to share consultation with advisory group and LIP reference group Chair.

Alternative Dispute Resolution

14. Mr O'Connor advised members that a mediation pilot will stem from the DOJ modernisation plan. A number of information tools will be available to assist parents. Mr O'Connor advised that the Department will be in touch with stakeholders to advise them further in relation to the pilot. Ms Hutchinson queried who the stakeholders are, Mr O'Connor advised he will provide a list of stakeholders and confirmed that the pilot is for separating parents.

The County Court and Small Claims Court

County Court financial jurisdiction consultation paper

15. The Department's consultation on County Court financial jurisdiction ran from 4th February to 30th April 2021, and responses are currently being analysed by the DOJ. Mr Allamby queried the timeframe if the matter had to go through the assembly.

The Chair said that there would be a fair amount of work for courts with changes likely to take some time to come into effect. She said structural changes would be necessary and consideration may be given to deployment of Judges that would deal solely with civil business; it was considered likely that more resources would be necessary and that would need to also take into account any impact on NICTS both in terms of staff and accommodation.

Mrs Cassidy noted that item 15 on the modernisation document is to monitor the post consultation report. Mrs Elliott advised that it was anticipated three hearing centres would be required and asked if Mr O'Connor could provide a note to be circulated to members.

Action: Mr O'Connor to provide a note for circulation to members.

Digitisation

Consumer Council review of money judgments

16. The Chair advised that Mr Martin and Mr Kennerley had met to review the data collected, however COVID has affected any further progress. Mr Kennerley was not present at the meeting and can update members at the next meeting.

Judicial Digitisation Steering Group

Courtroom Technology

17. Mr Goodfellow advised that Wi-Fi is now available in all courtrooms. A courtroom technology upgrade has been completed in 45 courtrooms and a summer rollout schedule was agreed to commence in courtroom technology upgrades in 6 courtrooms in RCJ, 2 courtrooms in Laganside and Dungannon courtroom 3.

Mr Goodfellow confirmed there are now 67 Sightlink licences and 18 WebEx licences in operation, and an additional 30 Video Conferencing Units have been installed in courtrooms and tribunal hearing rooms to facilitate remote and hybrid hearings.

Mr Goodfellow also advised that 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 when the legislation ends.

E-Bundles Pilot

18. Mrs Elliott updated members with progress in respect of the e-bundles pilot which was set up after the Lord Chief Justice established a Judicial Digitisation Steering Group to explore options for short and long term requirements for modernising courts. Mrs Elliott explained that given the rapid move to remote courts during Covid-19, the group's focus is on investigating options for sharing court bundles electronically working towards the aims for paperlight and ultimately paperless courts, and feed into the wider NICTS Modernisation Programme. The group are open to learning from what works well and does not work in other areas, and have commenced a pilot of the Bar Library's Optimised Brief and Bundle Service (OBBS) which may be at least a short-term solution to receiving and using e-bundles. At present the pilot has not yet been trialled in cases involving LIP's.

19. Since the pilot held on the 14 April further pilots were arranged on the 17th June and the 25th and 28th June: one family, one commercial, and one chancery, online training was also arranged and provided to 21 participants involved in the three cases. Initial feedback was that this was a positive experience for both the judge and legal profession, and the lessons learned will be applied to further pilot hearings in the new term and will look at other technical alternatives for receiving e-bundles.

Mrs Elliott advised that the pilot has not been successful in trialling a commercial case as those selected had settled prior to hearing. She said that efforts were being made to identify enough cases to test the pilot so that different requirements could be established.

Mrs Elliott also advised that the pilot would not mandate a system to be used but will establish a format. She said that cases involving LIPS's were not being tested at this stage of the pilot process.

Ms Hutchinson advised that her firm currently has a case before McAlinden J which may be suitable for the pilot.

20. Mrs Cassidy queried if the pilot would be extended to the county court.

Mrs Elliott updated members that an attempt to include a case before Judge Gilpin in the county court was not successful as the matter settled before the hearing. It is hoped that the process can be refined in the High Court and then extended to the county court, at present the pilot is not appropriate for the magistrate's court. Mrs Elliott also outlined the issues with using Box as the

storage system and that it is affecting the format of the bundles. Establishing the requirements of a storage system is a key priority of the pilot.

Ms Hutchinson advised that her firm have created a portal to allow the sharing of information between solicitor firms which has worked very well.

Ms Hutchinson advised that they would be happy to assist NICTS.

Professor McKeever asked that LIPS's be involved in the pilot and that not to include them in the pilot would cause frustration for those involved.

Mrs Elliott confirmed that LIP's would be involved prior to anything being signed off.

Mr Allamby pointed out the advantages of building a system with those who are not IT literate, or whose first language is not English, being kept in mind at the early stage of the process.

Mr Goodfellow confirmed that the digital and ICT strategy will be developed with accessibility for all and that there is a commitment to get it right. Mr Goodfellow will liaise further with Mrs Ward.

The Chair confirmed to members that the e-bundles pilot is in the very early stages and the plan is to involve LIP's.

Action: Ms Hutchinson to share details of the case which would be appropriate for the pilot with Mrs Elliott.

Probate Online Portal

21. Mr Goodfellow updated members that the Probate Online Portal went live on 14 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 the end of July, 151 applications have commenced on the portal (42 citizen and 109 solicitor) and 79 applications have been completed (25 citizen and 54 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 in September.

Draft Digital Strategy

22. Mr Goodfellow updated members and advised that the draft Digital Strategy has been revised taking into account comments from the judiciary and key stakeholders and will reissue shortly for further consultation.

Alternative Dispute Resolution

23. The Chair advised that a pilot will be launched which aims to offer a choice for dispute resolution without the need to bring the matter before the small

claims court. It is hoped the pilot will be launched before the end of the year and members will be able to be updated with progress at the next meeting.

Disability

NICTS Disability Sub-committee

24. Mr Goodfellow advised that a disability sub group is not being set up as part of the modernisation portfolio. The Stakeholder Advisory Group has been set up as part of the modernisation programme and it will provide an opportunity for wider engagement with stakeholder groups including disability groups. The Chair advised that the Law Society has two sub-groups, one considering access issues for the deaf community and the other group considering access to the courts estate for clients and solicitors with mobility or mental health issues. Online participation and how the use of Sightlink could facilitate those with disabilities was also discussed.

Ethnic minority groups

25. Mr Yu pointed out the need for the minor settlement consultation to be inclusive of all ethnic minorities and said that it would require an equality impact assessment.

Action: Mr O'Connor to check with Mrs McAlpine's team if EQIA for Minor Settlements takes into account needs of ethnic minorities as well as disabilities and religion and also to ensure this is part of any and all EQIAs going forward.

Clinical Negligence

26. The Consultation on the Clinical Negligence Protocol issued to groups on the 18th June 2021 and closed on the 30th July 2021. A number of responses were received and these have been sent to the Clinical Negligence Practitioners Group, for further consideration. It is hoped that the new draft protocol will be issued before the start of the new term. The Chair advised that work would then commence on the draft protocol for Clinical Negligence in the County Court

Discount rates - Personal Injuries

Damages Return Bill

27. Mr O'Connor advised members that the Minister introduced the Damages Bill to the Assembly on 1st March and this is currently before the Justice Committee who have called for further evidence. No further update is available as some members may be called to give evidence.
Mr Ross advised that the 1.75% rate will become an indefinite rate if the Bill is not passed in time.

Any Other Business

Shadow Justice Council

28. Mrs O'Hare asked if now was the right time interlink the shadow advisory board and the shadow advisory group.
Mrs O'Hare also questioned if the group was to remain a shadow group.
The Chair advised that at present it was understood there are no plans to change the structure, which requires legislation as the Minister's priority within this mandate had been determined and included for example progression of the domestic violence initiatives.

Mr Allamby said he felt it would be beneficial to have substantive groups and important to identify the stakeholders.

In response to a suggestion from the Chair all members agreed that a written report in advance of meetings would be helpful.

The Chair advised members that Mrs Elliott will be the contact for criminal work and Julie McMurray and Catherine Di Maio will be the contacts for civil work.

The Chair thanked Mr Allamby for all his work on the sCJC and wished him well in his retirement.

Next Meeting

29. The Chair thanked everyone for attending the meeting remotely, and advised that the next meeting would be arranged to follow the meeting of the substantive sCJC in the New Year. The arrangements would be confirmed with members in advance.