

SHADOW CIVIL JUSTICE COUNCIL ADVISORY GROUP

Minutes of the Seventh Meeting of the shadow Civil Justice Council (sCJC) Advisory Group held on 22nd March 2023 at 4.00pm via WebEx video conferencing and in person attendance.

Attendees: Debbie Maclam (Chair, LCJO)
Pamela Reid (NICTS)
Bronagh O'Reilly (DoJ)
Patricia Tennyson (NFU Mutual/ ABI)
Alastair Ross (ABI)
Alison Cassidy (DAC Beachcroft)
Maurece Hutchinson (JMK Solicitors/ APIL Member)
Catherine Feely (Housing Rights)
Ursula O'Hare (Law Centre NI)
Greta Gurklyte (Disability Action)
Julie McMurray (LCJO)

Secretariat: Catherine Di Maio (LCJO)

1. The Chair welcomed everyone to the meeting and thanked them for attending. The Chair advised members that she has taken over as Chair of the Advisory Group and placed on her record her thanks to Mandy Kilpatrick for all her work as Chair. The Chair also placed on record her thanks to Janet Hunter who has stepped down as the Housing Rights representative and has been replaced by Kate McAuley.

Apologies

2. Apologies were received from received from Karen Ward (Pamela Reid attending on her behalf), Grainne McKeever, Glenn McKendry (Patricia Tennyson attending on his behalf), Nuala Toman (Greta Gurklyte attending on her behalf) Steven Allison (Bronagh O'Reilly attending on his behalf), Kate McAuley (Catherine Feely attending on her behalf) and Htaik Win.

Minutes of the Meeting 29 September 2022

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

Covid-19: Business continuity and recovery

4. Mrs Maclam updated members that there has been no change to the guidance issued by the LCJO on the 22 June 2022 in accordance with Public Health

Guidance, although it is hoped updated guidance will issue in April. Mrs Maclam advised that figures for October to December 2022 for civil business in the High Court showed that disposal of writs and summonses was 65% higher than the same quarter in 2021, with the number of writs received also increasing by 15% compared to the same quarter in 2021. Figures for the County Court showed that there was no consistent pattern when compared to figures for the same quarter in 2021, Mrs Maclam also noted that the number of small claims disposed of had increased by 21%.

Estates Programme

5. Mrs Reid advised members that work is continuing 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 Northwest Accommodation Project's strategic review is underway and a workshop with NICTS Senior Management Team will be held in coming weeks to agree next steps. Strategic Investment Board 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. Mrs Maclam advised members that a revised construction estimate of £10m has been agreed in respect of the work on the Old Townhall building with a new open market procurement competition being initiated in January 2023. It was noted that delivery of this project will be protracted, and it will therefore not address any immediate pressures at Laganside Courts.

Litigants in Person (LIP)

6. Mrs O'Reilly updated members on the work of the Litigant in Person Reference Group, the Reference Group 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 Reference Group hosted 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, was the key speaker. Members of the profession and the judiciary were invited to attend and the seminar was well received. Mrs O'Reilly advised that the Reference Group would welcome any suggestions for future seminars.

7. Ms Hutchinson said the Contentious Business Committee welcomed the seminar and noted the benefit of training the legal profession to deal with distressed clients, which would also assist in dealing with litigants in person. Ms O'Reilly advised that this could be considered in the future for any events, subject to budgetary constraints. Mrs Maclam advised that the Chair of the Shadow Civil Justice Council was pleased that the Department has reached agreement to fund maintenance of the tools developed by the Ulster University for LiPs involved in family proceedings, Mrs O'Reilly advised that work is ongoing on an MOU following this agreement. Mrs O'Hare enquired if new priorities for the Reference Group had been agreed, Mrs O'Reilly advised that the focus at present was on the launch of the tools for Litigants in Person and once that had been accomplished consideration would be given to other potential areas of work.

Out of Court settlements of cases involving minors where there is no record of their legal representation.

8. Mrs O'Reilly 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. Ms Hutchinson noted, from figures obtained via a freedom of information request to the Department for Communities, that a large number of cases were still registered with the Compensation Recovery Unit without a legal representative being recorded and potentially without court approval and enquired if the ABI and representatives of the insurers, as well as the Law Society could seek a commitment from their members to not settle minors cases without court approval pending the introduction of the legislation to prevent this happening in the absence of the Assembly. Mr Ross noted there were a number of reasons why legal representation may not be recorded despite the plaintiffs having legal representation and enquired if the figures that Mrs Hutchinson had were public and if they could be shared and agreed to look into the issues raised. Mrs Cassidy provided some background information on the consultation figures for members and discussed the issue of accidents involving untraced drivers which cannot be brought to court and enquired if consideration would be given to adding this to the Bill. Mrs O'Reilly advised that she would refer that query to Mr Andrew Dawson in the DoJ.

Action: Ms Hutchinson to share figures

Action: Mrs O'Reilly to raise issue of untraced driver cases with Mr Dawson

Pre-Action Protocols (PAPs)

9. Mrs McMurray updated members on the progress of the pre-action protocols and advised that protocols for the County Court were issued on the 6 February 2023 in the following areas: Commercial Actions, Personal Injury and Damage only Road Traffic Accident Claims and Ejectment Proceedings. Mrs McMurray added that she hoped the Clinical Negligence Pre-Action Protocol and Practice Direction will issue in the next few weeks. Mrs McMurray asked members if they had any feedback on how the new protocols were working to date, Ms Hutchinson advised that it was too early to give an indication. Mrs McMurray advised that feedback would be welcome at any time and a formal review would be carried out in 12 months.

Consultation on increasing the County Court financial jurisdiction

10. Ms O'Reilly updated members that the small claims jurisdiction increased in October 2022 to £5k. 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. Ms Hutchinson enquired if it was the intention that all clinical negligence cases would be dealt with in the High Court, Mrs O'Reilly advised that was her understanding but any changes would have to be put before the Justice Committee.

Vision 2030: Judicial Advisory Group

11. Mrs McMurray advised members that the first meeting of the Vision 2030 Judicial Advisory Group (JAG), chaired by Mr Justice Huddleston, took place on 29 November 2022. While not a governance board, the JAG has been established to inform and advise the NICTS of the operational judicial modernisation requirements across all court tiers and business types; and to help give effect to the supporting culture and practice changes within the wider judiciary and legal profession. It aims to complement other stakeholder advisory groups established under the Vision 2030 Portfolio. Nominated members represent the judiciary across all tiers (including the Chairs of the Shadow Civil Justice Council and Shadow Family Justice Board), the Bar and the Law Society, including the Young Bar and the Young Solicitors Associations, and Vision 2030, reform and operational leads from the NICTS and the Lady Chief Justice's Office. Mrs McMurray added that members are expected to act as a channel to colleagues and peers in communicating and championing the business and culture change. At the meeting on 29th

November 2022 it was agreed that small sub-groups would be formed from the overall membership to focus on particular business areas, which may be taken forward simultaneously, subject to capacity. Where appropriate, other 'experts' (e.g. academic) may be invited to contribute or join a sub-group for a defined 'project' or 'task', with meetings arranged to focus on particular, discrete or specialist areas of business, in line with the overall modernisation plan or priorities (as agreed with the NICTS). The nature and frequency of meetings and outputs required will evolve to translate high level aspirations into practical requirements throughout the initial scoping phases, to procurement and competitive dialogue and into lower level design as the modernisation programme progresses over the next 5 years. Mrs McMurray confirmed that the Judicial Advisory Group is running in tandem with the NICTS Vision 2030 Portfolio.

12. Mrs McMurray advised members that a sub-group dealing with 'Civil Case Initiation, Management and Progression' has now met on three occasions – most recently on 27 February 2023 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 group has drafted a high-level process template and members will now consider how each court tier/ business type fits with the template and whether any process improvements can be made now, in advance of digital modernisation, with the aid of Practice Directions or protocols. Mrs McMurray confirmed that a second sub-group dealing with 'Family Case Initiation, Management and Progression' has also been established and held its first meeting on 21 March 2023. The template produced by the Civil sub-group has been shared with the Family sub-group to assist with its discussions. Mrs Maclam added that the NISRA report had been published in relation to the use of remote technology and the DoJ were currently looking at options for permanent provisions for the use of remote evidence and were considering including this in the Modernisation Bill.

Digitisation

13. Mrs Reid updated members that the main focus of the team has been to finalise the high-level specification requirements for the Future Core Solution, which has been named Themis, in readiness for the procurement which launched on 27 February 2023. It is expected this will take 12-15 months with the award of a contact taking place in 2024 and implementation planned to take place over a five-year period. Significant work has been undertaken by

the team and stakeholders to identify and review the requirements and Mrs Ward would wish to extend her thanks to all those who have participated in this process. Mrs Cassidy queried if the new system would replace the traditional methods entirely, Mrs Reid advised that it would be a digital first approach but would not prevent the use of traditional methods and that there would be continued engagement with stakeholders throughout the process. Mrs Cassidy queried if there would be a requirement for rule changes with the introduction of the new system, Mrs Reid confirmed that there would be and rule changes would be kept in mind along with changes required to Practice Directions and Pre-Action Protocols. Mrs Maclam advised that consideration had been given as to how stakeholders would be kept up to date with developments and it is planned that quarterly updates would be issued by the Vision 2023 team.

14. Mrs Reid advised that 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 Official Solicitors Office and the Office of Care and Protection, and the outcome of this work will inform the final implementation date.
15. Mrs Reid advised that 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 NICTS 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. Mrs Reid confirmed that the technology in 64 courtrooms had been updated with 5 courtrooms in Laganside still to be updated. Mrs Reid advised members that NICTS were aware of the limitations of sightlink and were considering other products which could be used.

Online Dispute Resolution

16. Ms O'Reilly updated members on the commercial consortium leading the online dispute resolution pilot (Consumer Code for Online Dispute Resolution

(CCODR)). She said work is continuing on potential funding streams to allow a trial involving cases which would normally fall to the small claims court.

Mrs O'Reilly added that the General Authority which launched to allow mediation in non-family cases without the prior authority of the Legal Services Agency is continuing to operate and an early-stage evaluation is in train.

Disability

17. Ms Gurklyte advised members that Disability Action were due to provide training to the Northern Ireland Judicial Appointments Commission on the 23 March 2023, focusing on reasonable adjustments. Mrs Gurklyte further updated members that Disability Action had also attended a meeting with the former Justice Minister and the DoJ in respect of the barriers facing those with disabilities navigating the justice system.

Any Other Business

18. Mrs McMurray advised members that it had been agreed at the 14th meeting of the sCJC on the 8 December 2022 that McKenzie Friends and Experts would be recognised as a priority area. Scoping work on how the recommendations can be progressed has commenced and a further update will be available at the next meeting. Ms Hutchinson noted that McKenzie Friends had been discussed at a meeting of the Litigant in Person Reference Group and queried if a code of conduct for McKenzie Friends would be introduced. Mrs McMurray advised this would be considered as part of the scoping exercise and any proposals would be subject to consultation.
19. Mrs Maclam provided an update to members on the creation of civil hearing centres. She advised that progress had been limited and space was still challenging as a result of covid recovery but that civil hearing centres would remain on the agenda.

Next Meeting

20. The Chair thanked everyone for attending the meeting and advised that the next meeting would take place on a date to be confirmed in the Autumn. Members will receive a written report in advance of the meeting.