

SHADOW CIVIL JUSTICE COUNCIL

Minutes of the Fifth Meeting of the shadow Civil Justice Council held on 17th September, 2019 at 4.15 pm in Judges' Assembly Room, Royal Courts of Justice, Belfast

Attendees: Mr Justice McAlinden (Chairman)
District Judge Brownlie
His Honour Judge Devlin
Master McCorry
Liam McCollum QC (Bar Council)
Laurene McAlpine (DoJ)
Debbie Maclam (NICTS)
Mandy Kilpatrick (PPS to the Lord Chief Justice)

Secretariat: Kim Elliott (OLCJ)
Katharine McQuade (OLCJ)

1. The Chairman welcomed everyone to the meeting and thanked the members for their attendance. He formally recorded a note of thanks to Lord Justice Deeny for the progress made under his chairmanship over the last 2 years. He also extended a warm welcome to the new Access to Justice Director, Anthony Harbinson, who was in attendance to observe the work of the shadow Council.

Apologies

2. Apologies were noted from Paul Dougan, Michael Foster and Peter Luney.

Previous minutes - shadow Council meeting on 26th March 2019.

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

Digitisation for & in court

4. Mrs Maclam updated members on the roll-out of the new courtroom technology kit which has been deployed across 12 courtrooms to date, and will continue to be rolled-out over the next 12 months. While this kit provides a more modern, resilient and robust infrastructure for our courts, it depends on a new in-court secure Wi-Fi solution in order to realise some of the key benefits, but this has been delayed due to the roll out of the new nigo network across the whole Civil Service. NICTS are working with key partners to progress this. Once this is in place they will arrange for a presentation to be provided to judiciary and legal profession. NICTS will commence a further

review of future digital solutions including e-filing and e-bundles, which will report in March 2020.

5. Mrs Maclam said that works to install new cabling and additional Wi-Fi points in the RCJ commenced over the summer recess in preparation for the upgrade of courtroom equipment. Cabling of the judicial corridor and the installation of Wi Fi access points in judge's chambers is almost completed and two Master's chambers on the first floor have been cabled. A formal update in relation to the status of the work programme and next steps will be provided for the RCJ Judicial IT group meeting chaired by Lord Justice Stephens on 25th September 2019.
6. Mrs Kilpatrick advised that information explaining the differences between the IT tiers by functionality has been provided to assist the judiciary determine the appropriate level of each courtroom and the Digital Services Team has offered to meet with the judiciary to discuss their requirements and address any queries.

Online Dispute Resolution (ODR)

7. Mrs Maclam suggested that that there may be potential for ODR initiatives to be considered by the Strategic Oversight Group (SOG). Mrs Kilpatrick explained that this group included the Lord Chief Justice, DoJ Permanent Secretary Peter May, NICTS Chief Executive Peter Luney, and the Justice Minister (when appointed). The Chair said that this area should be kept under close scrutiny and review as significant gains could be made if an effective, efficient ODR system could be implemented.

Litigants in Person (LIP)

8. The Chair informed members that he had accepted an invitation to join the LIP Reference Group and had attended his first meeting as judicial representative on 10th September, and agreed to attend the next meeting to discuss the role of McKenzie friends. The Chair undertook to report back to the shadow Civil Justice Council (sCJC) following this meeting. He also advised members that there had been discussion at the meeting about the possibility of extending the membership of the sCJC to include a LIP representative. Members considered the size and composition of the sCJC membership created a sensible balance between transparency, inclusivity and effectiveness. They noted that the majority of LIPs were single litigants and the Reference Group had been established as a forum where individual LIP views could be expressed and collectively fed back to the sCJC through existing members of the Council and the Advisory Group, and suggested that

further time was required to allow for the bedding down of these structures. It was also suggested that it would be beneficial to allow time for Professor McKeever's further research to be carried out. It was agreed that a response to this effect should issue to the LIP Reference Group.

Action: The Chair to report back to the sCJC following the above meetings.

Action: Mrs Kilpatrick to draft a response on behalf of the sCJC to the LIP Reference Group re the request to extend the membership of the sCJC.

9. The Chair also advised members that he had agreed to provide a list of all Judicial training undertaken or planned in relation to LIPs, and that Mr Allamby is seeking funding to deliver training on distressed court users to the legal profession. He is to present a paper at the next meeting of the sCJC Advisory Group.
10. There was discussion surrounding the NICTS Consultation on 'Improving Cost Recovery in the Civil Courts' which closed on 18 February 2019. Members queried whether the outworking of the consultation would include any provision for departing from the automatic waiver of fees in specified circumstances. Judge Brownlie expressed concern that no cost analysis or determination of the merit of a case is provided for in the current exemption and remission policy, which could result in public bodies incurring significant defence costs which then fall to the public purse. The Chair considered that the issue was one of concern to both the judiciary and the professions.

Action: Mrs Maclam to confirm if NICTS is to change the exemption and remission policy with the fee changes from 1st October 2019.

Commercial Hub

11. Mrs Kilpatrick advised that the new Commercial Hub which commenced operation in the High Court on 29th April 2019 is still in the very early stages and commercial practitioners will need time to get to grips with the new procedures. Mr McCollum said the Bar appreciate the early difficulties and are encouraged that the Hub is working towards its main objective of cost-effective speedier justice. Mrs Kilpatrick confirmed that Mr Justice Horner intends to meet with relevant judiciary, practitioners and court staff during this term to review operation of the Hub and discuss any issues or concerns regarding compliance with the procedural changes. This will also help to inform the business and judicial requirements for the IT solution needed to support the Hub operation.

Disability

12. Mrs Maclam confirmed that NICTS has finalised the membership of a sub-committee to produce an implementation plan in conjunction with the estates strategy, and will provide an update at the next meeting. .
13. The Chair spoke to his experience of dealing with hearing impaired litigants. There was discussion surrounding the difficulties in retaining the services of sign language interpreters, the need for them to work in pairs, the different languages needing signed, and the requirement to use separate interpreters for inside and outside the court environment. The Chair advised that a JSB workshop on 'Access to Justice for Deaf and Hearing Impaired People' was scheduled on 7th November 2019 and that several of his colleagues would be attending. He undertook to report back as to any insights or quick fixes for improving participation that could be fed back to NICTS.

Clinical negligence

14. Master McCorry said that the work of the Clinical Negligence Practitioners Group (CNPNG) was still bedding in however he had not yet witnessed the desired improvements. He confirmed that he had agreed to present another CPD event at Law Society House on 9th October 2019 and that he had also agreed to meet with the chairs of the Contentious Business Committee and the CNPG, as if improvements were not soon apparent, further consideration would have to be given to sanctions.

Alternative Dispute Resolution and Mediation

15. The Chair advised that a synopsis of the second edition of the Jackson ADR Handbook had been circulated on 10th September and the judiciary had been reminded that copies of both editions were available from the Judges Reference Library. Members agreed that recommendation CJ56 could therefore be formally closed.

Action: Secretariat to record CJ56 as closed.

16. Ms McAlpine informed members that the Department is currently preparing a consultation paper on legal aid funding for intra-litigation mediation in the civil courts which it intends to issue to the sCJC by the end of October. This follows the judgment in the case of 'An Application by Rose Njoki Edmunds for Judicial Review' which ruled that there is clear scope for the Legal Services Agency and Department of Justice, to devise appropriate protocols or other arrangements for funding mediation, in consultation with the profession.

The county court and small claims court (Civil Hearing Centres)

17. Judge Devlin referred to the summary of consultation responses which had been circulated to members and confirmed that the responses received had been generally positive. He advised that the Lord Chief Justice acknowledges the role and responsibilities of NICTS in relation to Impact Assessments, and is content that they be progressed pending, or in tandem with, a rollout on a pilot basis of centralised civil hearing centres. The Chair confirmed that the sCJC endorses the proposals and the concomitant involvement of the Department in Equality and Rural Impact Assessments which will inform future direction.
18. Mrs McAlpine informed members that the Department was working on a draft consultation regarding the financial jurisdiction of the County Court which should be prepared by the end of the calendar year. Judge Devlin commented that an increase in jurisdiction would have to be matched by an increase in judicial resources. Mrs Kilpatrick said the SOG would be cognizant of the bigger picture and the facilities and resources available to best meet future business needs. The Chair advised that it would be important for the SOG to see the draft consultation paper as soon it was available.

Discount rates – Personal Injuries cases

19. The Chair cautioned members that he was currently presiding over a personal injuries case where he would be required to determine the discount rate and that any discussion on this topic should proceed against this background. Mr McCollum highlighted the profession's concern over delay and asked if this could be added to the list that can be taken forward by DoJ in the absence of an Assembly. Mrs McAlpine explained that any change to the framework to align with other jurisdictions would require primary legislation, and that she has advised the Permanent Secretary of the sCJC's position.

Key priority areas

20. The Chair reflected that the terms of reference and the five priority areas had been set when the sCJC was established almost 2 years ago. He invited members to consider refreshing the key priorities and put forward any proposals as to which further areas should be prioritised before the next meeting. He reminded members that they should consider both large scale and grass roots changes which could bring about clear benefits in a short time scale with little resource. A note of suggestions received will be circulated in advance of the next meeting to inform discussion. Mrs Kilpatrick suggested

that a table tracking the progress of the recommendations be recirculated to members to assist this task.

21. Master McCorry said that practitioners in the CNPG were working on a case management protocol which may take shape as a Practice Direction and could provide a quick win in the absence of legislative change.
22. Mrs Kilpatrick advised that the LCJ had raised the lack of case management information available at a business meeting with Peter Luney and David Lavery and that, while the issue was principally being considered in respect of family hearings, any improvements could be of benefit in respect of civil hearings too.

Action: Secretariat to circulate table tracking progress of all the recommendations.

Action: Members to consider which new areas should be prioritised and submit suggestions for circulation in advance of next meeting.

Advisory Group

23. Mrs Kilpatrick confirmed that the next meeting of the Advisory Group was scheduled to take place on 8th October 2019. She confirmed that both the Civil Hearing Centre Consultation and LIP Reference Group updates would be on the agenda.

Any Other Business

24. The Chair advised that Judge Brownlie had raised a concern about out of court settlement of cases involving unrepresented minors, and the LCJ was content that an approach be made to the Attorney General to see if there was any scope for his office to raise public awareness in the absence of legislation. Mrs McAlpine said that the Department intended to issue a consultation paper on the issue but that any change would require primary legislation. The Chair considered that approaching the Attorney General could be a stop gap measure prior to the suggested consultation or legislative change. Members confirmed they were content for Judge Brownlie to draft a letter to this effect to the Attorney General on behalf of the sCJC. Mrs Kilpatrick requested that a copy of the draft be made available for the upcoming meeting of the Advisory Group.

Action: Judge Brownlie to draft a letter on behalf of the sCJC to issue to the Attorney General regarding concerns about out of court settlement of cases involving unrepresented minors. A draft of the letter to be provided to Mrs

Kilpatrick in advance on the sCJC Advisory Group meeting on 8th October 2019.

Next Meeting

25. The date of the next meeting was agreed as **Tuesday 21st January 2020 at 4.15pm.**