

## SHADOW CIVIL JUSTICE COUNCIL

**Minutes of the Fourth Meeting of the shadow Civil Justice Council held on 26 March, 2019 at 4.15 pm in Judges' Assembly Room, Royal Courts of Justice, Belfast**

Attendees: Lord Justice Deeny (Chairman)  
Mr Justice McAlinden  
District Judge Brownlie  
His Honour Judge Devlin  
Master McCorry  
Liam McCollum QC (Bar Council)  
Paul Dougan (Law Society)  
Michael Foster (DoF)  
Laurene McAlpine (DoJ)  
Peter Luney (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 welcomed Mr Justice McAlinden to his first meeting and also welcomed Mrs Laurene McAlpine back to the shadow Council. He noted that Mrs McAlpine and Stephen Martin would be alternating their attendance representing DoJ.

### Apologies

2. Apologies were noted from Paul Andrews.

### Previous minutes - shadow Council meeting on 13 November 2018.

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

### Digitisation for & in court

4. Mr Luney updated members on the progress of the 'Courts 2020' Transformation Portfolio. He advised that NICTS had identified three pilot projects to test concepts and develop a range of new integrated on-line services. Of particular relevance to the shadow Council is the 'Non-Contentious Probate End to End Solution'. Mr Luney explained that although the business area in this instance is small it could be used to test a number of concepts which could be scaled upwards e.g. online case initiation, digitised service and uploading of digital evidence. The end result of the process would be an order which would issue digitally. He advised that the pilot should

commence during the course of the next business year, and he had planned a meeting with the Chief Executive of the Bar, and had hoped the Law Society would also accept an invitation to meet.

5. Mr Luney also spoke about the issues surrounding the reliability and compatibility of courtroom technology. He confirmed plans to roll out a new, reliable and flexible audio and video courtroom system in the next 18 months to 2 years. He advised that this solution would provide a greater degree of flexibility, provided protocols were adhered to, and could facilitate the use of packages such as Skype or Facetime and allow practitioners to stream evidence directly from laptops which would address current issues such as using incompatible DVDs. It was also noted that the roll-out of wi-fi in courtrooms would be part of the programme.
6. Mr Luney advised that Laganside Court 11 was being refined to test Proof of Concept for the new technology, and he would arrange demonstrations for the Judiciary and profession once this was working well.

**Action: Mr Luney to arrange courtroom technology demonstrations for Judiciary and profession.**

#### Online Dispute Resolution (ODR)

7. The Chairman reminded members that it had been agreed at the last meeting that Mr Luney and Mr Martin would provide an annual update on this area. He explained that it was included on the agenda as a reminder that this area is still a priority.
8. Mr Luney referred to the International Forum on Online Courts which he attended in December along with Mrs Kilpatrick. Papers on the British Columbia model of ODR and a report from the conference were circulated to members shortly before the meeting. Mr Luney also confirmed that a meeting had taken place with DoJ regarding the priorities which might be addressed by an incoming minister and how ODR could be factored into these priorities. District Judge Brownlie advised that during the Civil Justice Review she had participated in a sub-committee on this topic and had scrutinised the British Columbia model. She favoured the introduction of a less complex and more inexpensive model which could accommodate small claims where it was inefficient to deal with low value cases in the current court structure. Mrs Kilpatrick added that the forum had emphasised the importance of learning from others both in taking on board what works, and averting costly failures. Mr Luney agreed to discuss the issue with District Judge Brownlie to see what could be taken forward for small claims in particular.

**Action: District Judge Brownlie and Mr Luney to discuss the introduction of an ODR model which could facilitate small claims.**

Litigants in Person (LIP)

9. Mrs McAlpine informed members that the LIP reference group had met for the first time on 12 February 2019. She advised that it was chaired by Sinéad Mulhern, a retired solicitor who has worked in both the statutory and voluntary sectors, as well as private practice, and has direct experience of engaging with litigants in person. Mrs McAlpine also confirmed the group included representation from the Bar Council and the Law Society. The reference group will focus primarily on family law issues and the next meeting will be in May. Mr Justice McAlinden confirmed that he has accepted an invitation to join the reference group.
10. The Chairman reported that the Judicial Studies Board had scheduled a workshop on LIP on Wednesday 27 March, to which all permanent judiciary had been invited, delivered by Professor Gráinne McKeever and Dr Lucy Royal-Dawson.
11. Mr Luney referred to the NICTS Consultation on 'Improving Cost Recovery in the Civil Courts' which issued on 10 December 2018 and closed on 18 February 2019. He confirmed that 16 responses had been received and further meetings were planned with the profession with the hope that policy proposals should be finalised in the autumn. The Chair applauded the proposals regarding the fee waiver policy.
12. Mr Dougan noted that the fee bracket which had caused the biggest surprise was the review hearing. He explained that, due to the various mechanics of how a review hearing can be requested, the number of review hearings can be substantial. He confirmed that these concerns had been raised in the Law Society's response to the consultation. Master McCorry advised that matters previously listed in summons court lists were more regularly being dealt with at reviews at the earlier stage negating the need for a summons and thereby saving the profession from having to pay fees. Mr McCollum QC suggested that NICTS were increasing fees to raise funds to make up for a reduction in the volume of writs being issued, and raised the concern that an increase in fees could be seen as contrary to the concept of access to justice. Mr Luney advised that NICTS was obliged to achieve full cost recovery under Managing Public Money NI, and the fee increases were being proposed due to under-recovery on the cost of administering civil justice.

## Commercial Hub

13. The Chairman noted that the Practice Direction, which he felt implements and formalises previous good practice, had been completed and approved and that the new Commercial Hub is due to commence operation in the High Court on the first day of the Trinity term, 29 April 2019. Mrs Kilpatrick advised that, while the electronic diary system for the Hub is not yet available, that, in the interim, an alternative arrangement along the same lines as the system in Manchester will be implemented on a short-term basis to support the administration of the Hub and provide the judiciary with timely information regarding case status, court lists and judicial availability.

## Disability

14. Mr Luney explained that he had hoped to have a meeting of the NICTS sub-committee scheduled by this stage but that he had some concerns in terms of the balance of the membership. He circulated a document containing both the draft Terms of Reference and the potential membership of the sub-committee and asked the shadow Council for their views. Mrs Kilpatrick suggested that rather than incorporate a full array of individual voluntary groups in the membership it might instead be more manageable to approach umbrella organisations such as the Northern Ireland Council for Voluntary Action, or use court user forums to capture issues raised locally. Mr Luney agreed to reconsider and to update the shadow Council secretariat regarding the revised membership.

**Action: Mr Luney to finalise the membership of the NICTS sub-committee and provide details to the shadow Council secretariat.**

15. Mr Luney confirmed that the technical and functional surveys of all buildings in the court estate had begun in the north-west and should be completed within 9 to 12 months.

## Clinical negligence

16. Master McCorry spoke to the interim report on the issue of accreditation. He explained that the sub-committee had not met since the shadow Council's previous meeting so that he could meet directly with representatives of the Law Society. He said that the primary initiative of the Law Society to address the issues of professional standards among clinical negligence practitioners is the re-constituting of the Clinical Negligence Practitioners Group (CNPG). The aim of the CNPG is to raise standards of those practicing in this area of

expertise, and work along with the judiciary to identify training needs for those falling below the standards expected.

17. Master McCorry informed members that several other options had also been explored. One of these was consideration of a formal “badge of excellence” scheme, but the Law Society has concerns about the regulation of such a scheme and its own ability to assess and stand over claims of expertise. Instead, it will look at the possibility of a solicitor’s letterhead referring to their membership of the CNPG. A second proposal was that Masters and Judges intervene directly and require a practitioner to join the CNPG if it is deemed necessary. The Master confirmed that he saw no difficulty with this. A third proposal was the introduction of a scheme requiring practitioners to attend a minimum number of CPD events and provide confirmation of this annually. Failure to do so would not preclude practitioners from accepting work but would be treated as a disciplinary offence, similar to conveyancing practitioners.
18. Master McCorry proposed that, unless there was any particular urgency, there would be merit in allowing the work of the CNPG to bed in. Mr Justice McAlinden agreed with this approach and suggested that if issues were not dealt with then compulsory accreditation could be revisited at a later stage. Mr Dougan assured the shadow Council that this issue was a high priority for the Law Society.
19. The Chairman asked for the Bar’s view on the issue. Master McCorry confirmed that the Bar had proposed an Advisory Committee which Counsel could go to for advice and guidance. It was acknowledged that a joint committee would not work and Mr McCollum QC undertook to report this back to the Bar Council.
20. The Chairman agreed that the Law Society should pursue the CNPG forum and use of the CNPG ‘title’ on a solicitor’s letterhead as an indicator of membership, and consider CPD methods of accreditation. Members agreed that consideration of a stronger mandatory approach should be deferred until the end of the year to allow this to bed in. Mrs Kilpatrick suggested that the professions should write formally to the shadow Council to set out the measures that they propose to take.

**Actions: Mr McCollum QC to update the Bar Council on the Law Society’s position regarding a joint committee as initially proposed, and seek their view on the way forward for the Bar;**

**Mr Dougan to update the CNPG and direct them to put their proposals for improvements to the shadow Council in writing;**

**Secretariat to note that sCJC wish to review for improvement at the end of 2019.**

Alternative Dispute Resolution and Mediation

21. The Chairman referred members to the paper addressing the recommendation at CJ56 that the Jackson ADR Handbook be made available to all judges dealing with civil business. He noted that the Judges' Reference Library held one copy each of both the first and second editions of the handbook and that there has only been one instance of one of these copies being requested from the Library by a judge. The Chairman indicated that he was content that the judiciary is alert to the availability of mediation and alternative resolution methods in this jurisdiction. Members agreed that the demand for the book, which has already been updated on-line since published, did not justify the projected costs of supplying a copy to each judge dealing with civil business. It was agreed that the suggestion contained in the paper, that a synopsis of the second edition be circulated to the judiciary in the first instance to promote the availability of the book in the Library, was appropriate. Interest in the book can be monitored and an informed assessment made as to how many additional copies of the book might need to be purchased.

**Action: Secretariat to circulate the synopsis of the second edition of the Jackson ADR Handbook to judiciary and monitor the volume of requests made to the Library for either edition.**

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

22. Judge Devlin advised members that proposals had been put forward through the Department and County Court Rules Committee in respect of two areas: provisional damages and a procedural equivalent to Order 14 of the Rules of the Court of Judicature (summary judgment). He confirmed that Rules to this effect were being drafted and would serve to extend the jurisdiction of the County Court in these matters.
23. Judge Devlin referred to the draft consultation paper on civil hearing centres which had been circulated to members. He explained that following the success of the Armagh pilot, proposals had been developed to centralise the hearing of all County Court Judge civil business, including equity, within four Hearing Centres at Belfast, Armagh, Coleraine and Omagh and these

proposals were laid out in the consultation paper. He explained that the benefits had been proven in Armagh, and hoped that extending this concept to all areas would enable more efficient disposal of civil business to be achieved. Mr Dougan added that the profession regarded the Armagh pilot as a hugely successful scheme, and that it was good to see a courthouse previously earmarked for closure being used effectively to centralise civil business. Members approved the draft consultation paper and agreed that it should now formally issue to targeted consultees for a 6 week period.

**Action: Secretariat to arrange for the consultation 'Proposals for the Creation of County Court Civil Hearing Centres in Northern Ireland' to issue.**

#### Discount rates - Personal Injuries cases

24. Mrs McAlpine informed members that the Lord Chancellor had announced a review of the discount rate in E&W under the Civil Liability Act 2018. She advised that the new rates should be known by 5 August and that Northern Ireland would wish to wait and see the out workings of this. She also suggested that Northern Ireland would wish to take into account the position in Scotland where a Bill to change how the discount rate is set is still going through the Scottish Parliament.
25. Mr Justice McAlinden advised that most of the cases which have required judicial approval in this jurisdiction have taken adequate regard of the rates in the rest of the UK. He therefore did not believe that the position in Northern Ireland had led to any detriment in those cases which have settled and required judicial approval. Mr McCollum QC felt there was a significant issue with less serious cases over the last 2 years where regard was not taken and which would be coming due again for review; adding that the DOJ had effectively ignored the increase in 2017 and there would be little merit in applying that rate now. He urged the need for DOJ to apply tests as soon as the new rates are known and ask the Permanent Secretary to approve these should the Assembly still be absent.
26. Mrs McAlpine explained that the Permanent Secretary would want to take into account any developments in E&W and Scotland before reaching a decision. She confirmed that advice would issue to the Permanent Secretary and the matter would be on his radar but she could not predict when a decision would be taken or what the decision was likely to be. She agreed to pass on the concerns of the Council.

**Action: Mrs McAlpine to advise the Permanent Secretary of the concerns held by the shadow Council regarding discount rates in Northern Ireland compared to the rest of the UK.**

#### Advisory Group

27. Mrs Kilpatrick confirmed that the Advisory Group had met in January and that there had been twelve participants present in addition to the Civil Service officials. She said that she had outlined the role of the group and it had been agreed that they would formally meet twice a year but that ad-hoc meetings of particular members could be arranged as required to discuss specific issues. Members of the Advisory Group were invited to send the secretariat details of their particular areas of interest so that relevant updates could be provided and it was also agreed that the draft minutes of the shadow Council meetings would be shared informally with the group on the understanding they would not be circulated further until formally agreed and published. It was also noted that the Advisory Group would be included in the targeted consultation for Civil Hearing Centres.
28. Mrs Kilpatrick reported that LIP had been discussed at the meeting and that members noted the difficulties experienced by LIP in understanding when their case might be reached on a court list, or when they could leave the court building without fear of their case being called. Mr Luney explained to the Advisory Group that G4S staff would sometimes assist in this respect as would practitioners involved in the particular case. Mrs Kilpatrick informed the shadow Council that it had been agreed that the issue should be brought to the LIP reference group and Mr Luney had also agreed to explore the issue with court staff.

#### Any Other Business

29. Judge Brownlie raised the issue of out of court settlement of cases involving unrepresented minors. She advised that there was concern during the Civil Justice Review that the funds would not be properly invested for use and benefit of the minor, and that figures she had recently obtained demonstrated that the issue remains a problem. Mrs McAlpine said that enquiries had been made of insurance companies but that primary legislation would be required to address the issue. Judge Brownlie agreed to share the figures she had received with Mrs McAlpine.

**Action: District Judge Brownlie to forward statistics regarding settlement of personal injury cases involving unrepresented minors to Mrs McAlpine.**



Next Meeting

30. The date of the next meeting was agreed as **Tuesday 17 September 2019 at 4.15pm.**