

SHADOW CIVIL JUSTICE COUNCIL

Minutes of the Third Meeting of the shadow Civil Justice Council held on 13 November, 2018 at 4.15 pm in Judges' Assembly Room, Royal Courts of Justice, Belfast

Attendees: Lord Justice Deeny (Chairman)
Master McCorry
Liam McCollum QC (Bar Council)
Paul Dougan (Law Society)
Paul Andrews (Legal Services Agency)
Stephen Martin (DoJ)
Peter Luney (NICTS)
Mandy Kilpatrick (PPS to the Lord Chief Justice)
Kim Elliott (OLCJ)

In attendance: Katharine McQuade (OLCJ)

1. The Chairman welcomed everyone to the meeting and thanked the members for their attendance. He welcomed Mr Stephen Martin (DoJ) to the shadow Council as the replacement for Mrs Laurene McAlpine and recorded his thanks for Mrs McAlpine's contribution to the shadow Council.

Apologies

2. Apologies were noted from Michael Foster. His Honour Judge Devlin and Judge Brownlie were unable to attend due to Court commitments.

Previous minutes - shadow Council meeting on 6 March 2018.

3. The shadow Council approved the draft minutes of the previous meeting.

Review of Action Points

Disability

4. Mr McCollum QC reported that the Wellness Committee is responsible for dealing with any disability issues arising for the Bar Council.
5. Mr Luney advised that NICTS are considering the recommendations as part of its overall Transformation Portfolio, and intended to establish a sub-committee which could include the professions. Mr Dougan advised that Mr Andrew Kirkpatrick was the disability contact in the Law Society and that he would be the appropriate representative. Mr McCollum QC suggested that Mr Bernard Brady as the new Vice -Chair, should be the first point of contact for the Bar's Wellness Committee, and that Mr Luney should contact him regarding appointment to the sub-committee.

Action: Mr Luney to invite Bar and Law Society nominees to attend NICTS Sub-Committee

6. Mr Luney said that the physical court estate (**CJ103**) was being looked at in the context of the NICTS Transformation Portfolio. He advised that technical and functional surveys of all buildings in the court estate should be completed by the end of 2018-19 and that further information should be available at the next meeting.

Action: Mr Luney to provide update

7. Mr Dougan agreed to liaise with the Law Society CPD Department regarding the issue of training. (*Following the meeting it was confirmed that the Law Society had organised a 'Short Sign Language Course' to take place on 20 November 2018.*)
8. It was agreed that recommendations **CJ110** and **CJ113** could be removed from the agenda and recorded as completed as being taken forward by the Professions.

Action: OLCJ/ Secretariat to mark CJ110 and CJ113 as completed.

Clinical negligence accreditation

9. Master McCorry provided a copy of a written update from the Sub-Committee on Accreditation to undertake Clinical Negligence Cases (**CJ211**). He advised that the professions are both strongly opposed to any system of mandatory accreditation which could result in practitioners not being permitted to undertake clinical negligence work, and negatively impact small practices, particularly in rural areas. He noted that the Children's Order Panel, which is cited as an example of accreditation, was a badge of excellence rather than accreditation and did not preclude instructions being accepted by non-panel members.
10. Both representative bodies did however recognise the need to address the recommendation to educate and raise standards, and had devised proposals for preliminary discussion. The Law Society had proposed the establishment of a Clinical Negligence Practitioner's Group and the Bar Council had proposed the establishment of an Advisory Committee to provide practical advice for practitioners. Master McCorry re-iterated the need to include proposals to encourage those who need help to seek it. The professions are exploring whether a joint committee could be established, and will report back to the sub-committee in January 2019. The Chairman confirmed that the Council was not pressing for mandatory accreditation but suggested that some 'badge of excellence' in the clinical negligence field may be a means for

the public and Legal Services Agency to identify practitioners who had achieved relevant training or expertise.

Action: Master McCorry and Mr McCollum to keep the shadow Council updated on the Sub-Committee's progress.

11. Mr McCollum QC raised a concern that experienced senior counsel were no longer being authorised, by Legal Services Agency to lead (and therefore educate) junior counsel in complex clinical negligence cases. Mr Andrews stated that he was unaware if this was an issue, and would check the position.
12. Mr Andrews also noted that DOJ had engaged a consultant to look at the PAC recommendations for 'contracting' legal services, and sought permission to share Master McCorry's paper with him - this was acceded to.

Action: Mr Andrews to report back on authorisations for senior counsel.

Digitisation and paperless courts

IT Literacy

13. Mrs Kilpatrick confirmed that the following line will be incorporated in the paperwork issued by NIJAC and also in the job descriptions issued by OLCJ: 'a minimum level of IT literacy to be a prerequisite for judicial preferment'. It was agreed that CJ10 could be recorded as completed.

Action: OLCJ/ Secretariat to mark CJ10 as completed.

Digitisation

14. Mr Luney advised that recommendations for potential pilot projects in this field would be brought to the next meeting of the NICTS Agency Board in December. It was anticipated that a short-list of five or six projects would be presented to the Agency Board and subject to cost benefit analysis, with the aim that two would be identified to implement next year. He confirmed that the focus was currently on digitising administrative processes rather than the court environment and that this would allow functionality to be tested.

Action: Mr Luney to keep the shadow Council updated on progress.

Online dispute resolution

15. Mr Luney reminded the shadow Council of the poor experience in the Netherlands and British Columbia with their online dispute resolution initiatives, but said that he would be working with Mr Martin to explore local

potential for policy initiatives. Mr Martin confirmed that the DoJ is neutral from a policy perspective but is willing to consider initiatives in Northern Ireland if the benefit can be identified. Mr Martin and Mr Luney undertook to provide an annual update on this issue. The shadow Council agreed that DOJ has seizure of the issue and that it can be removed from the agenda as an ongoing action.

Action: Mr Luney and Mr Martin to provide annual update.

16. Mr Luney confirmed that both he and Mrs Kilpatrick would be attending the International Forum on Online Courts in London in November and that he would provide a written update after the conference which could be circulated to members of the shadow Council.

Action: Mr Luney to update following London forum

Wi-Fi in Court

17. Mrs Kilpatrick explained that NICTS was considering including the Commercial Court in the initial roll-out of Wi-Fi to ten courtrooms in Laganside (CJ8) in order to align with the introduction of the Business Hub in January 2019.
18. The Chairman cautioned against extending wi-fi to the criminal courts to protect anonymity and prevent the use of social media during criminal trials. Mr Luney confirmed that the LCJ had already consulted on the use of live text-based forms of communications in court. He also advised that the Wi-Fi system in court would be secure and only available for registered users (judiciary, legal profession and court staff).
19. Mr Luney confirmed that the IT contract will include the use of SightLink as a video conferencing solution with double screens for the Judge and witness rooms in court.

Litigants in person (LIP)

20. Mr Martin advised that, rather than just updating or providing written guidance as recommended at CJ84, the DOJ was seeking more innovative ways to practically assist LIP and was working with the Human Rights Commission and Ulster University to establish a reference group for LIP. The group will aim to fully understand the needs of LIP in order to consider how to better address them. It is hoped that the group will be established after Christmas, and their outcomes will feed into both the shadow Council and shadow Family Justice Board.

Action: Mr Martin to keep the shadow Council updated on progress.

Waiver of Fees

21. Mr Luney reported that he planned to meet the Permanent Secretary regarding the launch of the NICTS consultation, 'Improving Cost Recovery in the Civil Courts' (CJ87).

Action: Mr Luney to share consultation paper when appropriate.

Business Hub

22. Mrs Kilpatrick circulated a written update on the progress of Mr Justice Horner's working group to consider changes to practice in the Commercial Division arising from the Review. She advised that Mr Justice Horner had engaged with local solicitors' groups and would be speaking about proposed changes at a Law Society event in December. She confirmed that NICTS was hopeful that an electronic diary system would be available in the Commercial Court for the commencement of the hub (CJ158).

Discount rates - Personal Injuries cases

23. Mr Martin advised that since the last meeting, Bills had been introduced in both Scotland and the UK Parliament to change the basis on which discount rates are set. DOJ had been unsuccessful in their attempts to include Northern Ireland in these Bills. He advised DOJ would consider how best to proceed following royal assent for the UK Parliament Bill which was anticipated early in the New Year. DOJ may consider secondary legislation to alter the rate if they cannot otherwise align with the changes. The Chairman suggested that it might be the duty of the Permanent Secretary to address the disparity.

Action: Mr Martin to report back on this issue at the next meeting.

Next Steps

24. The Chairman suggested that a meeting of the shadow Council's Advisory Group should be convened to provide an update on work progressed by the Council to date, to manage the expectations of the members and consider frequency of future meetings. Mrs Kilpatrick agreed to chair the Group and it was decided that members of the shadow Council would support her in this role and attend meetings of the Advisory Group as required.

Next Meeting

25. The next meeting will take place on **26 March 2019**.