



## **Synopsis of Civil Justice Council Meeting**

**Friday 29 January 2021**

The newly appointed Master of the Rolls (MR) has spent the last 6 months preparing for his role as Head of Civil Justice and travelled around the country visiting County Courts and talking to Designated Civil Judges.

The MR mentioned the importance of the range of dispute resolution mechanisms which already exist and how lessons could be learnt from private online dispute resolution. He spoke of his desire for an integrated justice system that provides access to justice efficiently so as to benefit the economy and the society as a whole. He said how conscious he is of digitally disadvantaged and vulnerable people, adding that he is keen to make sure that language is accessible and that systems are designed with these types of people in mind.

### **PREVIOUS WORK**

#### **Low Value Personal Injury Claims**

The final report was published on 18 December 2020. The chair of the working group highlighted that like other pieces of CJC work, data and the lack thereof was a key theme featured in the report.

#### **Anti-Social Behaviour & Boundary Dispute**

The chairman of the working group raised concerns that some judiciary and other stakeholders remain unaware of the report on anti-social behaviour. It was agreed that the report needed to be publicised further. The CJC stressed the importance of the Judicial College's role in ensuring consistency across the judiciary and suggested that crucial subjects should become mandatory within the training syllabus, rather than optional as they are currently. The Council heard that the CPRC has set up a sub-committee to consider any necessary rule changes in light of the report on Anti-Social Behaviour.

### **UPDATES ON CURRENT WORK**

#### **Pre-Action Protocols**

The Council discussed the results of the public survey on PAPs which ran between October and December 2020. 148 responses were received predominantly from lawyers but there were a limited number from litigants and representatives of court users. The responses received showed: respondents were broadly content with existing PAPs, some reform would be welcomed, significant support for integrating PAPs into the court process, certain sectors are keen for additional PAPs relating to their specific area of work, there was concern about a lack of consistency amongst the judiciary to non-compliance, and concerns about accessibility and awareness of PAPs by litigants.

Various CJC members have volunteered to join either the main committee or one of the specialist sub-committees proposed to date on personal injury, housing, judicial review.

#### **Guideline Hourly Rates**

Evidence gathering exercise had concluded at the end of November. The working group met during December and finalised the draft report which is out for consultation until 31 March.

### **Access to Justice**

The chairman of the working group spoke about the National Forum in 2020 which had been held online. Results of a survey shared after the event showed a preference for an in-person event but with remote joining available for future events. Sharing the date with participants and expected attendees in advance will give a deadline by which people can work towards.

### **MR's Working Group on Possession**

The chairman of the working group summed up the current position of possession proceedings in the courts and referred to the overall arrangements including r-date and s-date. The Society of Mediators had been successful in tendering for the planned pilot for mediation in suitable possession cases. It was noted that the pilot will not provide advice to the parties in the mediation in the process but may be of particular concern to defendants.

### **Judicial/ADR Liaison Committee**

Details were shared of the Committee's current areas of focus, particularly rule change and looking at examples of how ADR is used in the tribunals and by ombudsman. The committee may want to add someone with expertise in online dispute resolution (ODR)/artificial intelligence/digital systems. A new Chair will be appointed to oversee the Committee. Thanks were offered to Elisabeth Laing LJ, this was endorsed by the MR and the Council.

The Committee welcomed news a Dispute Resolution Unit had been set up within MOJ which would bring together work in civil, family and tribunals. The work of the new unit could tie in with the work of the CJC and the Judicial/ADR Liaison Committee once a strategy had been agreed with the Lord Chancellor.

### **MOJ update**

The MOJ spokesman updated the Council on civil recovery, housing, statutory instrument amending the taking control of goods regulations 2013, whiplash, fixed recoverable costs, independent review of judicial review, electronic execution of documents, civil reform, and updates to the Civil Procedure Rules. The Council heard that a new minister for civil justice has been appointed - Lord (David) Wolfson QC.

The MOJ had recently met with the Association of District Judges to discuss the ways in which courts are addressing the backlog. IT for district judges remains an issue. The Council heard that the CPRC had met last week and had approved the proposals in relation to Whiplash. Work on fixed recoverable costs had been paused but is now resuming; consideration of vulnerable parties will form part of that work.

## **FUTURE WORK**

### **Review of Vulnerable Witnesses one year on**

The past chairman of the working group shared a paper outlining the progress, or lack thereof, in implementing each of the recommendations from the report which had been published 11 months earlier. The Council heard the CPRC had approved an update to the Overriding Objective, with a practice direction to support it. A sub-committee of the CPRC continues to look at this report and the draft Domestic Abuse Bill which is currently passing through Parliament.

### **Future of Justice in a Technological Age**

The MR said it is essential that the courts are kept abreast of development in technological changes and he would like to create a group that will do this. The proposed new CJC working group alongside experts and CJC members, should produce bi-annual reports to highlight developments in technology and artificial intelligence, what the court system could be doing better and any gaps that exist. This Council would lead the work even though the group may consider civil, family and tribunals. The MR added that he would like the group to consider the use of technology as a whole, rather than specifically in relation

to remote hearings. The MR stated his intention that other sectors like ADR providers, businesses and consumers would also be involved.

### **Dealing with Small Claims in the County Court**

Whilst visiting County Courts during the autumn of 2020, the issue of small claims arose regularly in conversations with DCJs. The MR would like to implement a national approach to these types of claims to improve efficacy and efficiency. The MR requested that he would like a report on this before the Council next meets in April. He asked HHJ Barry Cotter to lead on this work, with support from DJs and DDJs.

The MR clarified that for now he would like the group to look mainly at listing and whether it should be early neutral evaluation or a directions hearing and whether the approach should vary between smaller and larger court centres. The MR added that he would welcome suggestions for further related pieces of work once the initial work concludes.

### **Can or should participation in ADR ever be made mandatory by the court?**

The MR acknowledged that mandatory alternative dispute resolution is a controversial area but could be hugely beneficial to the justice system. In this country there is generally trust of judges and mediators, so that is not a barrier to implementation. The MR requested that CJC member William Wood QC would take forward this work.

## **ADMINISTRATION**

### **Annual Report**

A draft copy of the annual report was circulated. The report shows the range of important topics that the Council has tackled in its recent history. A few amendments need to be made to the report such as effectiveness and outcomes which would enable the Council to cross-reference with the business plan.

### **Vacancies and Reappointments**

Four members are seeking reappointment which have been endorsed by the MR and are now with the Public Appointments Team to progress.

The Council discussed current vacancies and categories of membership. It was agreed that an official from HMCTS will be sought to join as a permanent member. A campaign will be launched to recruit five additional members to the Council – expertise in data, technology, small and medium sized enterprises would be welcomed as well as a barrister member. The advert for recruitment will be more generalised than previous campaigns in the hope of attracting applications from a wider talent pool and encourage more diversity onto the Council.

Date of next meeting – Friday 23<sup>rd</sup> April 2021