



Friday 23 April 2021

UPDATES ON CURRENT WORK

Guideline Hourly Rates

A change to the Terms of Reference for the group was highlighted, it was agreed that the group would now report to the CJC and Head of Civil Justice rather than Deputy Head of Civil Justice.

The interim report on guideline hourly rates for consultation between Jan-March 2021 has been published. Consultees were asked seven specific questions and were given the opportunity to provide any other information. 103 responses were received. The working group has considered consumers, litigants in person, geographical areas, legal aid rates, plus the general understanding of guideline hourly rates and their potential impact.

The final report will take the form of a summary of the interim report and detailed response to the consultation feedback.

The working group was thanked for their arduous work on this important subject.

MOJ update

The MOJ spokesperson updated the Council on housing, commercial rent arrears, whiplash, fixed recoverable costs, review of judicial review, electronic execution of documents, civil reform, change of name by enrolled deed and the Civil Procedure Rules. As the note had been prepared a couple of weeks in advance, the latest information regarding the review of judicial review was not included.

There was a discussion about when the first claims through the whiplash portal would likely reach the courts and training planned for the judiciary.

Pre-Action Protocols

The chairman of the working group updated that the membership of the working group had been extended to ensure relevant representation from sectors involved in pre-action.

It is expected that a first draft of the working group's proposals will be completed during the summer.

ADR

Work has continued on a report as commissioned at the Council's previous meeting. The two main issues covered in the report are a) is it lawful to mandate ADR, and b) when might it be appropriate to do so.

It was suggested that ADR (Alternative Dispute Resolution) be referred to as DR (Dispute Resolution) as it becomes increasingly part of the court process it is no longer alternative.

The chair of the group will consider the report on Small Claims to ensure alignment in the two pieces of work.

Access to Justice Standing Committee

The chair shared a written update ahead of the meeting covering the National Forum, LIPEG and a range of meetings the committee is due to have.

REPORTS FOR APPROVAL

Small Claims in the County Court

Data in the report is embargoed as part of HMCTS Official Statistics so the report cannot be published until 3 June.

The MR thanked the chair and the working group, acknowledging that the persuasive argument in the report had changed his view on the best way resolve small claims.

The chair of the working group outlined what the group had considered in producing this report. The Civil Procedure Rules permit that interim hearings are only allowed in certain circumstances. Birmingham piloted using interim hearings for all small claims hearings with some success but the final recommendation was not to expand the model of the Birmingham scheme, because data doesn't support that interim hearings make small claims hearings more efficient.

A second piece of work with a larger working group was recommended. It will need to represent the interests of litigants in person.

There are issues with the availability of data, its accuracy and timeliness. The CPRC will look at rule 27.6 and is considering forming a subcommittee on paper determinations and will work with the CJC.

The report was approved unanimously.

FUTURE WORK

Follow up Review Impact of COVID

MOJ and HMCTS are keen to see improvements in the data that is available to everyone to drive improvements and changes to the wider civil justice system.

May is 'Data month' where qualitative and quantitative evidence to understand the effect of COVID on the system will be collected. It will start with recording what judges are actually doing with a joined-up approach between civil and family as it is the same group of judges working across the two jurisdictions.

The rapid review previously took place at a time of unprecedented change in the ways of working. It would be useful to repeat something similar now a year later. It was suggested that Dr Byrom be asked to conduct a further review to look again at how users of the system are faring. The Council were asked to consent to approaching LEF to ask them to take forward this work.

Encouraging participation from lay users was flagged due to the lack of response in the previous review. This was not because of a lack of effort but highlights the lack of infrastructure for litigants in person and how to get data about them.

The Council approved this work.

Future of Justice in a Technological Age

MR postponed the discussion of this item at the next meeting in July so that can be discussed in light of a full paper in future.

ADMINISTRATION

Vacancies and Reappointments

Andrew Parker, Ian Karet, Jo Hickman and Bill Wood have successfully been reappointed to the Council.

The Lord Chancellor has approved recruitment for five posts: a barrister, someone with experience of SMEs in the civil justice system, an expert on digital technologies, a member who can advise on data architecture and econometrics, and an open position. It is hoped that the campaign will bring new expertise and greater diversity to the Council.

Business Plan

It was agreed that a meeting on the business plan would take place out of committee. Some queries were raised with the secretariat ahead of this meeting regarding the timeframe of the business plan.

Register of Interests

This will become a standing item at each Council meeting. Between now and the next meeting members will be asked to update their declared interests and it will be published on the CJC's website.

ANY OTHER BUSINESS

MDU Letter

The CJC received a letter from the Medical Defence Union, the Council were asked to discuss the letter and whether the CJC has a role to play in pre-empting the anticipated increase in claims.

It was suggested that it is not for the CJC to comment on at this stage. The letter covers a broader point for the justice system as a whole. It may be within the CJC's remit on how to deal with different types of claim if there does end up being an overwhelming number. At present it is for each organisation to support its own position and address it through the evidence to the court. The Legal principles have not changed.

A member recorded an interest as Senior Parliamentary Healthcare Ombudsman.

Regarding the handling of clinical negligence claims and types of claims brought about by particular types of claimants it would be interesting to see what the government proposes to do in future and then decide if the CJC has a role.

Consultation Response Judicial Review

The timescales on the consultation are short and the points at which they are consulting are wide. At a prior meeting of the Council the previous MR had not thought it was appropriate for the CJC to respond. This MR does not think it wrong for this Council to comment on changes to judicial review, and the changes that are being proposed. The Council were asked to consider a response.

In the consultation there are points on data and the reasoning behind them are made, but it is unclear on what evidence-base the recommendations have been extended.

There is unlikely to be any extension to the timeline, so the Council should work to the 29 April deadline.

It was suggested that the CJC should respond on the impact that the reforms would have.

Closed Materials Consultation

This item was discussed briefly. It was suggested that it is not appropriate to contribute at this time and that the Council can consider responding if relevant to the next stage.

Date of next meeting - Friday 2 July 2021.