



Friday 15 October 2021

## **MEETING OPENING**

The Circuit Judge member submitted a letter of resignation from the Council, owing to their promotion to the High Court. The Council recorded its thanks to the member for their insightful and energetic contribution to the work of the Council.

The minutes from the previous meeting were APPROVED.

## **UPDATES ON CURRENT WORK**

### **SMALL CLAIMS**

The Chair of the working group updated the Council that since the last meeting the group had been expanded to include a member from Support Through Court to provide the view of the litigant.

The Chair of the working group outlined the main proposals of the final report.

They explained one of the challenges the group faced was the availability of data on the number of appeals that go to a hearing. Similarly, on the dispute resolution hearings (DRH) pilot in Birmingham, there is limited data to be able to analyse the effect of the DRHs and compare with other locations where the standard process is being followed.

Members comments were invited.

The representative from HMCTS welcomed the proposals in the report and requested further discussion on the mechanics and resources of how the proposals will be put into practice, such as expanding the Small Claims Mediation Service to meet increased demand if mediation becomes mandatory for 50% of all small claims.

There was a short discussion about online dispute resolution.

A member noted that the report references other CJC work and demonstrates how the work of the Council is interconnected.

The representative from MOJ recorded their thanks for the report, highlighting that a number of issues required further consideration by MOJ e.g. funding, website and additional mediators, and that the ongoing consultation on dispute resolution should not delay work related to small claims.

It was agreed that the final report will be approved out of committee.<sup>1</sup>

## **PRE-ACTION PROTOCOLS**

A draft report and consultation was shared with the Council.

It was agreed that the report needed to be edited from its current form, some concern was expressed at the length of the report.

It was suggested that it would be helpful to include an executive summary at the start of the report.

The Chair of the working group explained he intention that the report will be published in November and open for consultation until the New Year.

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<sup>1</sup> The report was published in January 2022 and is available on the CJC website: <https://www.judiciary.uk/wp-content/uploads/2022/01/20220125-CJC-Small-Claims-Report-FINAL-2.pdf>

It was suggested that the report should include more reference to online portals, both those already in existence and those proposed.

It was confirmed that any consideration to the non-statutory nature of PAPs and if the group will seek legislation to underpin PAPs was outside the scope of the current work.

R questioned whether government would have an appetite to regulate portals, as many operate well already without government intervention. MR suggested that government should provide accreditation instead of legislation for portals which follow proper processes and create a data set which can easily be transferred into the court system.

MS thanked AH and welcomed the report, particularly points in relation to legal assistance and the disadvantage to weaker parties. On vulnerability, he wondered if there is any work looking at existing PAPs and the effect on vulnerable parties. Suggested expansion to the consultation questions in relation to legal assistance. AH said that, at present, vulnerability information is collected at the start of court proceedings, but this may need to be introduced into online systems before court.

A member raised what responsibility the CJC has to get consultation responses from litigants in person, suggesting the volume of proposed questions (52) would be off-putting to LIPs.

The Chair of the working group acknowledged that there were a large number of questions but stressed many of the questions will only be relevant to specific types of litigation.

The secretariat is conscious of length of report and number of questions and welcomed suggestions on best practice. The online consultation form will ensure respondents only see relevant questions.

#### **MOJ UPDATE**

A written update was provided covering the end of the housing mediation pilot on 31 October. MOJ is now beginning to evaluate the design, incentive to participate, funding of the service and culture shift in the way bulk users of the court for possession (mortgage lenders and social landlords) have been handling issues with tenants. No external evaluation is being carried out. The representative from MOJ reassured members that although the pilot is ending, this will not be the end of dispute resolution in housing/possession cases.

A member asked if MOJ were considering revising legal aid provision in relation housing in light of concerns about the sustainability of the sector. It was suggested that the Legal Aid Agency be asked to report back on legal aid in housing.

Changes to the possession working group established during the pandemic were outlined, including reducing the size of the group and a change in Chair.

An update was also provided by MOJ on the Whiplash Advisory Group. Use of the portal started slowly but is increasing rapidly.

Members requested the opportunity for a demonstration of the portal's capabilities.

#### **HMCTS UPDATE**

The representative from HMCTS outlined some work which HMCTS had been undertaking, including looking at listing backlogs and continuing with the program of Reform. Volumes are still not back to pre-covid levels, especially in possession. Judge Draws Directions Order (JDDO) training was completed at the end of September. There is no real end to reform, formally funding will end but improvement and change needs to be continuous and ongoing across civil justice.

A member requested that district judges using any digital platform for their work be alerted immediately if that service is down, so that time and work is not lost. A number of glitches to HMCTS, it is hoped they will be addressed swiftly.

## **NATIONAL FORUM**

The 10<sup>th</sup> CJC National Forum is on Friday 10 December 2022. A draft programme was included with the meeting papers and members were invited to share their comments. The day is divided between breakouts and plenary sessions, with three main themes to be covered during plenaries.

For the first time, the event is hybrid with people able to join in person and online.

## **ACCESS TO JUSTICE STANDING COMMITTEE**

An error in the papers for this item was highlighted - National Pro Bono Week will be in November not December.

The Chair of the Standing Committee explained that government measures which limited possession proceedings due to the pandemic have now stopped. Mortgage lenders and social landlords have on the whole changed the way they engage with tenants to resolve issues without coming to court leading to the significant drop in the number of claims.

The Chair of the CJC expressed thanks to the Chair of the Standing Committee and MOJ on work done on possession.

## **FUTURES GROUP**

The Chair of the CJC noted there is a lot of work being done on digitising across civil, changes being brought about in light of smart contracts, crypto, small businesses etc. and the civil justice system needs to make sure it is ready for what is coming, and it continues to update in line with changes in society. There is a need to deliver accessible justice to consumers in the future.

The Chair of the Futures Group thanked the Chair and the Council for the opportunity to undertake this work. They explained how technology can allow people and society to work differently and stressed the need to make sure that the English & Welsh system is attractive and competitive in comparison to other jurisdictions by offering world class access to justice.

They noted that there has been a lack of long-term thinking about the justice system. This group will think more strategically about how to improve the system going forward. Any proposals will need to be sustainable. Things the group will consider will include virtual reality, quantum computing, artificial intelligence, blockchain, and looking at technology emerging in international jurisdictions to learn lessons.

The group will be looking 10 years in the future and will engage with the CJC along the way.

## **FUTURE WORK**

### **COSTS AND FEES**

It was agreed that the Council will have a substantive discussion on this topic at a future Council meeting.

The Chair of the Council stated their intention to create a working group to look at whether a range of issues related to costs and fees across the civil justice system are sustainable and appropriate.

Members raised issues for consideration when the work commences including public vs private funding of legal disputes, small and medium sized businesses, proportionality, scope of the work.

The Secretariat asked Council members to consider this work and get in touch with proposals for any costs/fees that the Council might want to address.

### **LAW CENTRES NETWORK**

Law Centres Network had written to the CJC suggesting a correction to the report on mandatory ADR published in July 2021. Members agreed that the report was correct at the time, so no action to be taken.

## **RESEARCH PROPOSAL**

The CJC received a research proposal regarding the experience of litigants in person in the Administrative Court. It was agreed that the individual should be advised to contact MOJ and HMCTS directly with the request.

## **ADMINISTRATION**

### **VACANCIES AND REAPPOINTMENTS**

The Secretariat updated on recruitment and reappointments.

An expression of interest for a circuit judge representative will be published in due course.

## **ANY OTHER BUSINESS**

### **ASBI**

A member updated the Council on work the CPRC had been doing in relation to the CJC's proposed pre-action protocol for anti-social behaviour injunctions, including an update to Part 65 of the Civil Procedure Rules. Discussion about how best to publicise the sentencing guidance from the CJC report is still ongoing.

Date of next meeting – 25 February 2022.