



Friday 29 April 2022

MEETING OPENING

The Chair recorded the Council's thanks to the ADR member of the committee who has stepped back from the Council after three terms in the role.

There was a minor amendment to the minutes of the previous meeting before they were APPROVED. The action log had been updated from the previous meeting and will be circulated to members and observers for information ahead of the next meeting.

UPDATES ON CURRENT WORK

COSTS

Following on from the previous meeting, the proposal for a costs working group has been fleshed out. The work will look at the following areas:

- Costs budgeting.
- Pre-action protocols (PAPs).
- Fixed recoverable costs (FRCs).
- Guideline hourly rates (GHRs).

The proposal is to produce an initial report with questions that will go out to consultation. A CJC costs conference will be held in July 2022 to discuss issues in an open forum. The consultation will close in mid-September and a final report will be produced around Christmas.

On membership, there will be a smaller steering group and a wider working group.

MR confirmed that the report will consider the effect that the transformation of civil justice into a digital justice system will have on costs.

A member suggested adding someone with legal aid expertise to the group. This expertise is essential if the group are considering what happens pre-action. The suggestion was agreed.

Members discussed and suggested amendments to the proposed questions under the scope of work:

- A member suggested adding an amendment and timing question.
- On GHRs, a member suggested adding a question on methodology generally and challenged the reference to 'uprating' which suggests an increase. It was agreed that this reference be amended to 'adjusting'.

The Chair of the working group clarified that on FRC, the focus will be on the impact in relation to the work on reviewing costs rather than behaviours. On costs budgeting, the work will be kept to a higher level.

The MR noted that the purpose of raising GHRs is to try and understand in the digital justice system and FRC how significant they are, and what we should do about them, for example the group may say GHR are not likely to be important in the future, or that there should be a committee to review them annually.

There was a discussion about damages-based agreements (DBAs). It was agreed that DBAs are outside the scope of the group.

MR clarified that the purpose of the group is to make sure that as the major changes to the way civil justice operates takes place, we do not lose sight of the way costs will change in this new system.

It was clarified that the group will not look at fees.

A member challenged how the group will go to consultation without FRC already in place as budgeting might look very different once these are in place. The question will need to be framed carefully to get people to look beyond the present.

The creation of the costs working group was APPROVED.

HMCTS UPDATE

HMCTS provided a paper update covering current performance in the county courts, recovery from the impact of the COVID19 pandemic, and a reform programme update.

Members were told that HMCTS has a new Chief Executive, Nick Goodwin.

Timeliness and volumes are not yet back to pre-pandemic levels for final hearings, but are being monitored carefully. Allocations for sitting days is currently being processed. HMCTS are looking with interest at the use and efficacy of dispute resolution hearings in various pilots.

The Council were provided with figures on number of claims issued on the Online Civil Money Claims service. The service will be made available to legal representatives who are issuing claims up to £25k in May 2022.

Following a general discussion about Reform, a member noted they had been present at an initial meeting about Possession Reform. During that meeting there had been queries which were still outstanding.

A member asked about the availability of data showing volume of in-person vs. remote hearings. It was agreed that HMCTS will provide data on this for the next meeting.

A member spoke about the damages claims service and expressed their thanks as a user for the support provided by HMCTS about changes to the system. They noted that an ongoing difficulty is knowing far enough in advance about upcoming changes to allow practitioners time to amend practices and suggested better communications to practitioners, further in advance, would help.

HMCTS responded that communications were sent through practitioners' representative bodies, but welcomed suggestions about how else to disseminate news.

MOJ

MOJ provided a paper covering dispute resolution, whiplash, fixed recoverable costs, the Civil Procedure Rules and the Tenancy Mediation Pilot.

Since the last meeting, members of the Council had been provided with a demonstration of the Online Injury Claim (OIC) portal. There was discussion about the information being provided to the court through OIC was sometimes incorrect, the Council were assured that this was largely due to user error.

There have been conversations with HMCTS to ensure that DJs have access to reform products so they can understand the litigants' journey.

The Council were updated on volume of whiplash claims. MOJ are looking at why the significant change in volumes and will report to the Council in due course, as well as presenting at the October meeting on the experience of LIPs using the whiplash portal.

PRE-ACTION PROTOCOLS

The Council were updated that there was a meeting on 17 March with the Chair and select members of the working group, at which time those present agreed to bifurcate the work going forward to make the project more manageable. First report will be produced during summer. Second report will depend on the detailed work of the subcommittees but will follow hopefully later this year.

MR expressed his view that he is very keen for the group to explain what exactly the role of PAPs is to help provide clarity where things fall outside the rules and court procedure. MR asked the Chair to provide

detail on how PAPs work in the four categories of claim - small vs small, small vs big, big vs small, big vs big and the impacts on access to justice for each.

Other subcommittee chairs will have further discussion in due course.

FUTURES WORKING GROUP

The Chair of the working group joined the meeting to provide an update. They sought to contextualise the work of the group by referencing the current pace of innovation in technological change. The group is not looking at low hanging fruit of short-term benefits, but taking a longer term and strategic view of what could be possible.

The working group has been split into three focused areas – horizon scanning looking at emerging and likely technologies, to understand where there might be new types of legal disputes and how the technology can be used for dispute resolution. A second group considering how sustainable existing systems are and ongoing change. The third group aims to produce a road map demonstrating a vision of how the court with the assistance of modern technology may work, including the milestones which would need to be achieved and the obstacles which may impede progress. The working group is using its members to convene a community of experts to call on for specialist and specific advice.

There was discussion about the scope of second subcommittee's work. It was agreed that that subcommittee should not be looking at the HMCTS Reform Programme. The Working group should be looking more to the future. The purpose of the group is to provide information about the future to inform the CJC in its wider work.

It was agreed that a paper from each of the three sub-groups would be provided for the next Council meeting, in order that the Council can approve and comment upon proposed next steps. It is intended that there will be further substantive work by the group providing an output on which to have a longer discussion in October.

CPRC

A short paper was provided setting out key updates from the CPRC including the commencement of the damages claims pilot; the extension of fixed recoverable costs planned for April 2023; rolling consultation on simplifying the CPR and ongoing work on vulnerable parties arising from the CJC's report and recommendations published in 2020.

ACCESS TO JUSTICE STANDING COMMITTEE

It was suggested that the Access to Justice Standing Committee is abolished, to be replaced with a Conference Committee (which would focus on the National Forum) and an Executive Committee (which would play a more strategic role in the work of the Council). The hope would be to have a fixed term membership of the executive committee providing fresh perspective and providing members were greater opportunities for participation.

NEW BUSINESS

Item 3a – NATIONAL FORUM 2022

The secretariat updated on options for the venue for this year's National Forum.

Friends House was approved, and members were asked to save the date (18 November 2022).

This year marks a new start for the conference. Previously the Council have discussed whether the Forum should be a showcase of CJC work in the past year, the chance to talk about future work and/or the opportunity to hear from users across the country. The initial thinking is to shift the focus from access to justice for those without means to improving access to justice across the system for all users across the system.

Members were asked to think about a theme for the conference, the purpose of the conference and what we want the conference to achieve.

Item 3b – CONSULTATIONS

The secretariat has been circulating consultations that may be of interest to the Council in the monthly email update. Members are encouraged to let the secretariat know if they find a consultation to which they think the Council should respond.

DETERMINING MENTAL CAPACITY

Daniel Clarke (DC) was welcomed to the meeting. He wrote to the CJC sharing his article on the issue of determining mental capacity in civil proceedings. He was invited to explain the nature of the problem and why he feels the CJC should look at this area.

The article is on the perceived procedural lacuna in relation to determining mental capacity. He explained that the issues raised in the article are mostly from his own experiences over the course of his practice (predominantly in relation to housing cases). He set out some proposals for reform of the procedure in a paper to the Council.

MR explained that the CJC will want to look at the issue generally to identify the problems that exist. It will be necessary to consult on the issue identified and to make proposals on who might do what.

It is proposed that three specific issues should be considered: how is capacity identified? What is the procedure for determining it? What should happen to proceedings while capacity is being determined?

A member shared their experience where the issue of determining capacity has been raised in judicial review. It is a significant issue which is wider than it appears. Other members shared examples from non-housing cases. It was noted that it is particularly challenging for judges when neither party is represented.

A member raised possible joint interest from Family. It was agreed that this will be a consideration as the work progresses.

It was agreed that the CJC will set up a working group subject to confirmation that this area is not being looked at already by others within the sector. The Council recorded thanks to DC for his paper and for bringing this issue to the Council's attention.

ADMINISTRATION

RECRUITMENT TO THE COUNCIL

The process had almost concluded. It was hoped new members will be confirmed shortly.

Expressions of interest were launched before Easter for the current judicial vacancies (High Court, Circuit Judge). The process is run internally, as the MR has delegated authority to appoint judicial members.

Members expressed views about the need for broader representation and better diversity on the Council. It was agreed that before the next round of recruitment, roles will be shared with members, so they have an opportunity to comment on what qualities and experience are being sought.

BUSINESS PLAN & INDUCTION PACK

Working group chairs will be asked to popular their relevant sections for the future business plan. The secretariat will then draw together interwoven themes to agree priorities for the coming period.

In anticipation of new members joining the Council, an induction pack is in the process of being created.

It was suggested that there should be a process to gather feedback when members leave the Council, particularly if it was before the end of their term. This could take the form of an exit interview and/or questionnaire.

An overhaul of the [judiciary.uk](https://www.judiciary.uk) website, which hosts the Council's website, is imminent. The secretariat have been working closely with the team managing the update to make improvements to the Council's pages and will provide updates in due course. Suggestions from members and observers about the website were encouraged. As part of this update, it will be necessary change to the colour of the Council's logo for accessibility reasons – the change will be subtle.

ANY OTHER BUSINESS

DEVOLVED TRIBUNALS IN WALES

This item was for information only. A report which sets out recommendations for the standardisation of devolved tribunals in Wales was shared.¹

Date of next meeting - 8 July 2022.

¹ <https://senedd.wales/media/0thlxjca/gen-ld14747-e.pdf>