



Friday 8 July 2022

MANDATORY MEDIATION PRESENTATION BY MOJ

Members were joined by members of the Dispute Resolution Directorate in the Ministry of Justice (MOJ). They shared a number of papers setting out the background as to why MOJ is considering how it can increase the use of mediation in civil justice. It was explained that the two principal motivations behind this work reducing court backlogs and improving access to justice. The Council were told how engagement with mediation will work to ensure that action by parties is meaningful. There was discussion of data regarding the number of claims opting into this, future capacity of the system and funding.

The Deputy Chair thanked MOJ members for attending and for information provided. There was a question by the Deputy Chair regarding 'stays' in cases to allow for mediation and associated costs.

Council discussed the training requirements for the new mediators. There was discussion of guidance for mediations and engagement with mediation.

A member asked if there would be exemptions where parties have already engaged in mediation. A member of MOJ noted judicial discretion will be key and that they are keen to avoid duplication.

A member queried length of mediation appointments. A member of MOJ noted their data does not show types of claims, but the data suggests success across bands of claims.

Members asked about the availability of data and SCMS data. It was agreed updates areas would be provided at the next meeting. A member of MOJ noted plans to conduct focus groups to gather feedback and that more data will provide allow them to amend the service as required.

UPDATES ON CURRENT WORK

COSTS

The Deputy Chair wished to record thanks to the costs working group for contributions to the consultation¹ which had been published on 30 June and would close on 30 September. It was noted a public conference on 13 July and online webinars in September would further public engagement.

There was discussion of the implementation of fixed recoverable costs in types of cases.

PROCEDURE FOR DETERMINING MENTAL CAPACITY

¹ <https://www.judiciary.uk/wp-content/uploads/2022/06/CJC-Costs-consultation-paper-FINAL-June-2022.pdf>

The Deputy Chair thanked (DC) for attending. (DC) notified the council that no current work is being done on this subject but MOJ are content for this to take place and be kept informed of progress.

There was discussion of membership of the proposed group. Involvement of charities, academic roles and psychologist roles was discussed. Size of the group was discussed. (DC) left the meeting.

PRE-ACTION PROTOCOLS

A member notified the council of no update for this meeting. An update will be provided at the next meeting.

HMCTS

HMCTS provided a paper updating on numbers and timeliness of claims in the County Court. HMCTS noted they are thinking about how to measure progress and timeliness data. A member queried the helpfulness of performance continuing to be measured to “pre-covid”.

The paper also covered new initiatives and policy changes. HMCTS notified the council of a pilot being implemented to determine certain small claims on paper. Ahead of this pilot taking place, the Deputy Chair had worked with several judges to produce guidance to aid the judiciary and remove the need for a full written judgment.

A member queried how the data is being used to show outcomes and refine processes for court users. A member suggested sight of more specific data e.g. represented vs unrepresented parties, both as a whole and across particular claim types would be helpful to show issues with access to justice. HMCTS discussed various pieces of work ongoing to improve this. It was agreed HMCTS would present on outcomes for different court users at the next meeting.

HMCTS notified the Council on reform updates regarding online money claims and digital notification for service of claim. HMCTS are now focusing on training for court staff and judiciary to ensure they know how to work the newly updated systems. Enforcement will be next to be looked at as part of the process.

HMCTS was asked about changes in Damages Claims Service for defendants. A member noted law firms were not given enough time to plan and adapt to changes and concerns regarding functionality were raised. Discussion would continue outwith the meeting.

FUTURES

The Chair of the working group was invited to speak. The Futures Chair explained the aims of the group and discussed the terms of reference. The group had shared a number of papers. The Council was updated on the work being carried out by the group.

The Chair of the group delivered updates on technology, designing and piloting systems and the roadmap they hope to produce. The group's chair clarified the purpose of the group as containment of disputes in response to a member's question. There was a query from members regarding wording of the purpose of the group. A member noted that MOJ are also considering this topic.

A member commented on gaps within the papers provided and the links to HMCTS reform.

It was agreed the terms of reference would be revisited.

MOJ

A member provided a paper with updates on whiplash, fixed recoverable costs, civil procedure rules and the housing mediation pilot. The member noted the MOJ intend to publish a report on SLAPPS following the consultation and a statutory instrument for CPRC to finalise.

The Deputy Chair noted the Council should be updated formally on things relating to civil justice. A member noted it may be useful for the council to consider which of MOJ's work as a priority.

CIVIL PROCEDURE RULE COMMITTEE

A member provided a paper outlining the work of the CPRC, including updates to fixed costs extension, fixed recoverable costs reform and consultation to simplify CPR.

ADMINISTRATION

APPOINTMENTS

Secretariat provided an update on appointments, that the submission is with ministers for a decision. Concerns were raised by members on the delays.

EXECUTIVE COMMITTEE

A member of the Secretariat raised that an Executive Committee, EC, has been agreed at the last meeting. A paper was provided to set out the intentions of the EC. A shadow EC was agreed in the interim.

Members noted there was an EC a number of years ago. Secretariat explained they had been in contact with the Family and Administrative Justice Councils to discuss how they established respective ECs.

DELIVERING JUSTICE IN WALES

A member shared a paper with the Council². The member explained conclusions and recommendations within the report.

The Deputy Chair noted CPR involvement in this topic. A member noted comparison of recommendations improving outcomes for litigants, when compared to England, would be helpful. Secretariat noted the report omitted the Council. It was agreed this would be discussed in fuller detail at the next meeting.

² <https://gov.wales/delivering-justice-for-wales>