



ANNUAL REPORT

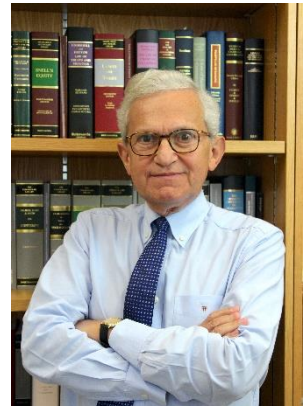
2022

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Civil Justice Council

FOREWORD

I am writing this in December 2023. The production of the 2022 annual report has been delayed due to vacancies in the Secretariat team. Although the focus of this report is on the Civil Justice Council (CJC)'s work from January to December 2022, it would be artificial not to mention the exciting opportunities 2023 has bought, not least the launch of the Online Procedure Rules Committee (OPRC) in November 2023, and the digital justice system. Against this backdrop of change and opportunity, the Council's statutory functions remain as important and relevant as ever.



During the period covered by this report, the Council has continued to meet regularly, respond to consultations, hold events, and produce a number of significant reports. Highlights include the Council's report on Small Claims, which recommended a more proportionate process for lower value claims, and the 11th CJC National Forum in November. The National Forum remains the largest event of its kind worldwide, with the number of delegates attending continuing to rise year on year.

New working groups were formed to look at Costs, and the Procedure for Determining Mental Capacity in Civil Proceedings. These workstreams demonstrate Council's continued willingness to tackle complex issues.

The establishment of an Executive Committee has renewed Council's focus on its governance, challenging it to consider how it can fulfil its statutory objectives most effectively. The quality of applications received to join the Council in the recent recruitment campaign are testament to the Council's continued influence and reputation in the wider civil justice sphere.

I would also like to mention the amendments to the Civil Procedure Rules which came in The Civil Procedure (Amendment) Rules 2022 in line with CJC recommendations in the 2020 Anti-Social Behaviour report as an example of the Council's ability to effect change through its recommendations.

I look forward to continuing to support Council in my role as Chair, and take this opportunity to express my thanks to Council, and working group members, for their continued dedication and commitment to improving the civil justice system for all.

A handwritten signature in black ink, which appears to read "Geoffrey Vos". The signature is stylized and includes a long horizontal line at the end.

Sir Geoffrey Vos
Master of the Rolls and Head of Civil Justice
Chairman of the Civil Justice Council

OVERVIEW OF 2022

The CJC is a statutory body. Its functions include keeping the civil justice system under review and making recommendations to Government, the judiciary, and the Civil Procedure Rule Committee on the development of the civil justice system to make it more accessible, fair, and efficient. The purpose of this report is to provide an overview of the CJC's working groups, activities, membership, and finances during the period from January to December 2022. The delay in producing this report is acknowledged.

To fulfil its statutory functions, the Council operates primarily through establishing working groups to look at a particular issue, or part, of the civil justice system. These working groups make informed recommendations, usually in the form of a report, for others to take forward. 2022 saw the conclusion of the working group on the Resolution of Small Claims, and the establishment of new groups looking at Costs and the Procedure for Determining Mental Capacity in Civil Proceedings. The Access to Justice Standing Committee was replaced in July by an Executive Committee, whose purpose is to play a more strategic role in the work of the Council. Council retains its focus on improving access to justice throughout its working groups, and its dedicated annual National Forum.

The work of the CJC should be viewed in context. The requirement to adapt to rapid change has been a feature of the last year, with the continuing impact of the COVID-19 pandemic. The work of the Futures Group encouraged Council to step back and take a long-term view of the impact of technology on the administration of justice. Data remains a priority for Council, and Council continues to engage with HMCTS and others on how best to support its data needs.

Membership of Council has increased, with four lay members appointed in August 2022 for a term of three years. A recruitment campaign for a further six lay members is expected to launch in early 2023. Two judicial members joined the Council to replace the High Court and Circuit Judge members respectively. A standing invite to observe full Council meetings has been extended to the Welsh Government.

At present, each working group has its own terms of reference.¹ The Council's statutory remit, as set out in the Civil Procedure Act 1997, and its work prioritisation criteria, helps the Council decide if it should and can carry out work.²

At its April 2023 meeting, Council approved a proposal to hold a strategy meeting to formally consider the Council's longer-term vision. This meeting was held in July 2023. A follow up meeting is scheduled for January 2024.

¹ To read working group terms of reference, please visit our website: [Civil Justice Council - Courts and Tribunals Judiciary](#)

² <https://www.judiciary.uk/wp-content/uploads/2019/12/Work-Prioritisation-Criteria-Dec-2019.pdf>

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COMMITTEES AND WORKING GROUPS

Terms of reference for the CJC's current and past working groups are available on the website.³

[Alternative] Dispute Resolution ([A]DR)

The Judicial/ADR Liaison Committee, chaired by Lady Justice Asplin, has met quarterly.

The Committee was established in 2018, following the CJC ADR report, and is a Committee of the Judges' Council.⁴ It has continued to be a useful forum, bringing together stakeholders across the mediation sector, and acting as a sounding board for proposals. It operates with three subcommittees: Rule Changes, Extra-Judicial, and Awareness and Education.

The Committee's activities over the period covered in this report have included:

- Engaging with stakeholders across the mediation landscape.
- Responding to consultations, including the MOJ Consultation on increasing the use of mediation in the Civil Justice system.
- Producing a 'workstream tracker' to identify previous, current, and future workstreams.
- Consideration of its membership policies and ways of working.

It was agreed in early 2023 that the Secretariat for the Judicial/ADR Liaison Committee would sit with the Master of the Rolls' Private Office.

Costs

A Costs working group was created in April 2022 and was set up to consider the following four areas:

- A review of costs budgeting
- A review of guideline hourly rates
- A review of costs under pre-action protocols/portals and the digital justice system
- Consideration of the wider impact of the extension of fixed recoverable costs.

The working group ran a public consultation between June-October 2022, which was re-opened between November-December 2022, to allow further comment on the implications of the Court of Appeal's judgment in *Belsner v CAM Legal*.⁵ The consultation responses which included permission to be published are available on the Council's website.⁶

The final report was published in May 2023.⁷

³ [Current Work of the Civil Justice Council - Courts and Tribunals Judiciary; Previous Work of the Civil Justice Council - Courts and Tribunals Judiciary](#)

⁴ <https://www.judiciary.uk/wp-content/uploads/2018/12/CJC-ADR-Report-FINAL-Dec-2018.pdf>

⁵ [Belsner v CAM Legal \[2022\] EWCA Civ 1387](#)

⁶ <https://www.judiciary.uk/related-offices-and-bodies/advisory-bodies/cjc/cjc-consultation-responses/>

⁷ <https://www.judiciary.uk/wp-content/uploads/2023/05/Civil-Justice-Council-Costs-Report-FINAL-May-2023.pdf>

Executive Committee

At the July 2022 Council meeting, it was agreed that an Executive Committee of the Council be established to provide a more regular point of contact between the Secretariat and the Council. A shadow Executive Committee was established, pending a full nominations process in early 2023.⁸ The shadow Executive Committee met monthly from September to December in 2022. Topics discussed included:

- The 2022 National Forum agenda.
- Induction process for new members.
- Nomination process for the full Executive Committee.
- Members' appraisals process.
- Policies, including a policy to clarify the position of non-CJC members joining CJC working groups.⁹

Futures

The CJC's Futures working group, chaired by Richard Susskind, met for the first time in October 2021. The group has been tasked with taking and encouraging a long-term view of the impact of technology on the administration of justice, with emphasis on increasing access to justice and securing the position of the legal system of England and Wales as a global leader. The group began by identifying problems in the current system, and considering what a future justice system could look like. It has updated the CJC regularly on its progress.

Pre-Action Protocols

The CJC's working group on Pre-Action Protocols (PAPs) published its interim report in 2021.¹⁰ This was followed by a consultation which closed in January 2022. Over 130 responses were received.¹¹ Following the consultation, it was agreed that the next phase of the work be bifurcated. The first part focused on the role of PAPs generally and the General PAP/PD-PAC.¹²

Procedure for Determining Mental Capacity in Civil Proceedings

At the July 2022 Council meeting, Council approved the creation of a working group to look at a procedure for determining mental capacity in civil proceedings. The working group was created

⁸ The full Executive Committee has now been established. Its terms of reference are available on the CJC website:

<https://www.judiciary.uk/wp-content/uploads/2023/02/Executive-Committee-TOR.pdf>

⁹ [Policy for non-members joining Civil Justice Council \(CJC\) working groups \(judiciary.uk\)](https://www.judiciary.uk/wp-content/uploads/2023/02/Policy-for-non-members-joining-Civil-Justice-Council-(CJC)-working-groups-(judiciary.uk))

¹⁰ <https://www.judiciary.uk/wp-content/uploads/2021/11/CJC-PAP-Interim-Report.pdf>

¹¹ The consultation responses, which included permission to be published, are available on the CJC's website:

<https://www.judiciary.uk/related-offices-and-bodies/advisory-bodies/cjc/current-work/pre-action-protocols-working-group/>

¹² Part I of the Final Report was published in August 2023: <https://www.judiciary.uk/wp-content/uploads/2023/08/CJC-PAP-report-Aug-23-FINAL.pdf>

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following a request to the Council by Daniel Clarke, a practising barrister, and is co-chaired by Diane Astin and Daniel Clarke.¹³

The working group identified the following areas for particular consideration:

- How the issue as to a party's mental capacity is identified and brought before the court.
- The procedure for investigating the issue.
- The procedure for determining the issue.
- The position of the substantive litigation pending determination of the issue.
- The particular issues that arise in relation to these issues as regards:
 - Litigants in person.
 - Parties who do not engage with the process of assessment of capacity.

The working group has met monthly and expects the first phase of meetings to be concluded by Summer 2023. This will be followed by a report for consultation in Winter 2023, and a final report in Spring/Summer 2024.

The Resolution of Small Claims

The final report on the Resolution of Small Claims was published in January 2022, following an interim report in June 2021. The report recommended a new procedure for the lowest value claims. As a consequence of the working group's recommendations, a subcommittee of the Civil Procedure Rules Committee was established to consider a pilot on the paper determination of claims. The 'Small Claims Paper Determination Pilot' commenced on 1 June 2022.¹⁴ The report also recommended mandatory mediation by the Small Claims Mediation Service for all claims under £500. In July 2023, the Ministry of Justice announced compulsory mediation for civil claims valued up to £10,000.¹⁵

RESPONSES TO CONSULTATIONS AND CALLS FOR EVIDENCE

During the reporting period, Council responded to two consultations:

- Consultation on the Singapore Convention on Mediation.¹⁶
- Consultation on Housing Legal Aid.¹⁷

¹³ Full membership and terms of reference are available on the CJC website: <https://www.judiciary.uk/related-offices-and-bodies/advisory-bodies/cjc/current-work/procedure-for-determining-mental-capacity-in-civil-proceedings/>

¹⁴ https://www.justice.gov.uk/data/assets/pdf_file/0004/177322/cpr-143-update.pdf

¹⁵ <https://www.gov.uk/government/news/new-justice-reforms-to-free-up-vital-court-capacity>

¹⁶ Read the Council's response here: <https://www.judiciary.uk/wp-content/uploads/2022/04/20220324-CJC-consultation-RESPONSE-to-MOJ-on-ratifying-Singapore-Convention-on-Mediation-2018-March-2022-FINAL.pdf>

¹⁷ Read the Council's response here: <https://www.judiciary.uk/wp-content/uploads/2022/01/January-2022-CJC-response-to-MOJ-Housing-Legal-Aid-Consultation.pdf>

EVENTS AND CONFERENCES

Costs events

On Wednesday 13 July 2022, as part of its consultation on Costs, the Civil Justice Council held a conference at Mary Ward House in Central London. The conference was attended by more than 120 interested organisations and individuals.

Sessions covered:

- Costs under pre-action protocols/portals and the digital justice system.
- Costs budgeting.
- Guideline hourly rates.
- Consequences of the extension of fixed recoverable costs.
- Impact of civil costs changes to other parts of the justice system.

The Council also held two online-only Costs webinars, as well as an in-person panel discussion hosted by the London Solicitors Litigation Association in September/October 2022.

The National Forum

The CJC's 11th National Forum 'Improving Access to Justice for All: The Future' was held on Friday 18 November 2022 at Friends House, Euston. It covered topics including Digital Justice, Costs, Determining Mental Capacity, the Future, Advice Provision, Anti-Social Behaviour, and more.

The Forum showcases the Council's convening power, and the importance of coming together across the sector for discussion. The 2022 Forum attracted over 300 delegates representing voluntary agencies, pro bono agencies, court users, the judiciary, businesses, Government, professions, and others.¹⁸

HOSPITALITY DECLARATIONS

The Council used the lecture theatre at Hogan Lovells' London office on 20 September 2022 to host a panel discussion as part of its consultation on Costs. The Council is grateful for this hospitality.

MEMBERSHIP

The following members left the Council:

- Mr Justice Robin Knowles – High Court Member.
- Mr Justice Barry Cotter – Circuit Judge Member.
- William Wood – ADR Member.
- Jo Hickman – Solicitor Member.

The Council appointed four new lay members for an initial term of three years:

- Dr Natalie Byrom – Information Architecture and Econometrics Member.
- Kate Pasfield – Other areas of expertise relevant to civil justice Member.
- John Sorabji – Barrister Member.

¹⁸ Videos of the National Forum are available on YouTube:

https://www.youtube.com/playlist?list=PLEF1_bG92bxsaqY3DTRdEI2_Ta_3RhiyV.

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- James Walker – Small and medium size enterprises Member.

The Council appointed Mr Justice Simon Picken and HHJ Karen Walden-Smith as the High Court and Circuit Judge members of Council respectively.

STAFFING

During 2022 Graham Hutchens, a longstanding member of the Secretariat Team, retired after 13 years supporting the Council, and an impressive 43 years in the Judicial Office (including its predecessor, The Lord Chancellor's Department).

APPENDIX A - Civil Justice Council - Work Prioritisation Criteria

The Civil Justice Council receives propositions of projects through several channels, including:

- requests from the Ministry of Justice
- direct requests from the Judiciary
- applications from external organisations
- internal proposals from individual members
- matters arising from an existing working group
- responses to external work
- through using its power of convening.

The Civil Justice Council is not resourced to tackle the entire civil justice policy agenda nor all the projects that are proposed to us. We propose using prioritisation criteria to help respond appropriately to our broad workload. We will assess against the following questions:

- Is there a statutory obligation to do the work?
- What specific added value can CJC bring to this work?
- Is the CJC the most appropriate body to carry out this work?
- If we don't continue with this work, will others and who?
- How does this piece of work fit with our existing priorities and existing work?
- What importance is placed on this work by external stakeholders?
- How many people will likely benefit from the work being done?
- Is there a realistic prospect that our work will have an impact?
- What are the chances of success?
- Are resources available to deliver the work effectively?

For work that we are currently doing, we will review at regular intervals. We will assess against the following questions:

- Is the CJC still bringing value to this work?
- How does this piece of work fit with our other priorities?
- Is there still a realistic prospect that our work will have an impact? What are the chances of success?
- Is the work progressing as intended?

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APPENDIX B - Civil Justice Council - Membership 2022

Category	Member	Appointment start date	End of current term	Current term number
(1) Judiciary				
(a) Court of Appeal	The Master of the Rolls (Chairman)		Ex officio	N/A
	The Deputy Head of Civil Justice		Ex officio	N/A
(b) High Court	Mr Justice Robin Knowles CBE	4 January 2016	3 January 2022	2
	Mr Justice Simon Picken	14 October 2022	13 October 2026	1
(c) Circuit Judge	HHJ Barry Cotter QC	13 June 2016	12 June 2022	2
	HHJ Karen Walden-Smith	14 October 2022	13 October 2025	1
(d) District Judge	DJ Judy Gibson	1 March 2019	28 February 2022	1
	DJ David Robinson	14 October 2022	13 October 2025	1
(2) Legal Profession				
(a) Insurer	Andrew Parker	31 July 2014	10 September 2023	3
(b) Solicitor	Jo Hickman	30 September 2017	29 September 2023 ¹⁹	2
(c) Barrister	John Sorabji	1 August 2022	31 July 2025	1
(d) Legal Executive	Vacant			
(3) Civil servant concerned with administration of justice				
(a) Ministry of Justice	Deputy Director Civil Justice and Law Policy		Ex officio	N/A
(b) Her Majesty's Courts and Tribunals Service	Deputy Director Civil		Ex officio	N/A
(4) Consumer Affairs				
	Elisabeth Davies	31 December 2021	30 December 2024	2
(5) Lay Advice Sector				
	Vacant			
(6) Specific Interests				
(a) Insurance	Nicola Critchley	25 July 2016	24 July 2022	2
(b) Employees	Vacant			
(c) Business	Vacant			
(d) Wales	Rhodri Williams QC	31 December 2021	30 December 2024	2
(7) Other				

¹⁹ Jo Hickman left the Council before the end of her term.

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(a) Housing	Diane Astin	15 October 2016	14 October 2022 ²⁰	2
(b) EU Exit	Ian Karet	15 October 2016	14 October 2023	3
(c) ADR Provider	William Wood QC	1 July 2014	10 March 2022	3
(d) Legal Academic	Andrew Higgins	31 December 2021	30 December 2024	2
(e) Lay Member	Matthew Smerdon	1 October 2013	30 September 2022	3

²⁰ Diane Astin was re-appointed in October 2022 for a third term of three years (ending 13 October 2025).

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APPENDIX C - Civil Justice Council - Budget and Expenditure April 2021 - March 2022

Description	Original budget (£)	Actual expenditure (£)
Catering	500	
Events and conferences	26,000	23,820
Staff Travel Rail	500	7
Staff Travel Other	2,500	21
Non-Staff Travel	3,000	514
Professional fees	4,500	
Communications	3,000	1,049
TOTAL	40,000	25,411