



Friday 28 April 2023

## **MEETING OPENING**

The Chair welcomed regular observers and first-time attendees, as well as a guest speaker from the Bar Council of Wales. No apologies were received.

The Council said goodbye and recorded its thanks to its District Judge member, and to the Deputy Secretary to the Council.

There were two minor amendments proposed to the minutes of the previous meeting. The minutes were **APPROVED** subject to these changes.

## **COSTS**

A final version of the Group's report, which was shared in draft form at the previous Council meeting, was circulated. The report covers four areas: costs budgeting; Guideline Hourly Rates (GHR); costs under pre-action protocols/portals and the digital justice system; and consequences of the extension of fixed recoverable costs (FRC). The Chair of the Working Group briefly outlined the main recommendations.

It was agreed by Council that the Civil Procedure Rule Committee (CPRC) should take forward the recommendations in respect of costs budgeting, but that the members of the Working Group should co-opt this. Council **APPROVED** the publication of the report.

The Council noted the importance of considering future work on costs which may arise from the publication of this report and elected for this to be discussed in an upcoming Council strategy meeting.

## **UPDATES ON CURRENT WORK**

### **Pre-Action Protocols (PAPs)**

The Chair set out the context in which this project has been progressing; namely the creation of the Online Procedure Rule Committee (OPRC), which occurred part way through this work on PAPs, after the scope of the project had been agreed. They stressed that this PAP report must not tread on things that have already been established in the digital justice system, nor cut across the work of the OPRC.

The Chair of the Working Group responded that they saw the issue differently: they did not feel that the CJC should agree with the direction of travel set by the OPRC, if its views contrasted with that of the CJC.

There was a discussion regarding the complexities that digitisation raised for the outcome of the report on PAPs. It was agreed that the Chair of the Working Group would first take their suggested amendments to the Digitisation Committee, then the Chair of the CJC and the

Secretariat would meet with the Digitisation Sub-Committee. Following this, amendments would be exchanged with a view to bringing a finalised report to Council for approval in July.

### **Procedure for determining Mental Capacity in Civil Proceedings**

The Chair of the Working Group circulated two documents for consideration by Council ahead of the meeting: a first draft of possible recommendations and additional options for further consideration, alongside a progress report of the Group for the Council's awareness. The Group sought the Council's input on five issues. In the following discussion it was noted, in response to this, that a half-day conference would likely get more engagement than a paper consultation.

The Group's next steps were outlined: they are meeting with a range of interested stakeholders including professional bodies and legal professionals, as well as MOJ and HMCTS in due course too. MOJ in particular raised that there was value in exploring early legal advice, as there are issues to discuss in relation to enforcement which could be considered and incorporated at this early stage.

### **National Forum**

A draft programme for the event in November 2023 was shared with the Council for review, so that members could make suggestions and input to the decision making for the day. The Secretariat thanked the nominated judicial member of Council who had agreed to lead planning for the Forum with the Secretariat.

There were four topics suggested for addition to the programme: Solicitor's Act, property litigation, data, and cases outside of the scope of legal aid. A Member urged further thinking on the suggested outcomes for the day and how those outcomes link to the Council's overall strategy. The Secretariat agreed to update the programme in accordance with members' suggestions and re-share with Council.

Members were asked to put forward contact details of anyone who they felt should be invited to contribute to the day.

### **Futures**

There has been a pause in this Group's activity following discussion at a previous Council meeting (October 2022) about the Group's terms of reference (TOR) and whether it was appropriate for the Group to plot a roadmap for civil justice. It has been agreed by the Council and the Chair of the Working Group that the TOR should be amended. The revised TOR were APPROVED by the Council.

There was a detailed discussion, led by the Chair, about how artificial intelligence (AI) is likely to be used in the justice system, and the possible effects of its use. A Member requested that someone from the Information Commissioner's Office (ICO) be co-opted to the Group. It was agreed that this would be discussed with the Chair of the Working Group.

### **UPDATES FOR INFORMATION**

#### **HMCTS**

The members from HMCTS provided an update on Online Civil Money Claims and the Damages claims service. Several members requested further data on these services, which HMCTS have agreed to provide at the next Council meeting in July.

A Member requested an update on the position with Small Claims Mediation. Work is still being done on this, but it was the hope of HMCTS and MOJ that the Council will receive a further update soon.

### **Welsh Interests**

The Member for Welsh Interests introduced a guest speaker from the Executive Council of the Law Council of Wales. The speaker, who is the Chair of a Working Group examining the viability of a national dispute resolution centre for Wales, updated the Council on the project.

The Member for Welsh Interests then updated on an action from the Council's October meeting, which was to suggest an information source in Wales to feed into projects and working groups conducted by the CJC. A member of the Law Society National Board for Wales has agreed to take this to the other members of the board for consideration at their next meeting.

### **MOJ**

The MOJ Member provided an update on the Rented Homes Bill, Whiplash, Enforcement, and the Bill of Rights.

They welcomed members' input on the number of civil cases that sit outside traditional Civil Courts, which the Chair agreed to discuss with the Deputy Director outside of Council.

A Member requested an update on the open justice consultation which they understood that MOJ may be about to launch, as well as an update on the Data Protection and Digital Information Bill. MOJ noted this for a future update.

A Member reflected that enforcement is an area that has never really been tackled and wondered whether this was an area for future work by the Council. It was agreed that this is a potential area for reform.

At the last Council meeting, the MOJ Member took an action to broaden their reports to cover more cross-Whitehall items. The Chair encouraged MOJ to broaden the update even further, suggesting that a wider scope is helpful even if it provokes more questions.

It was requested that, if members have specific items that they wish to be covered in a future update, they raise these with the Secretariat.

### **CPRC**

The Chair of the Working Group noted for the purpose of tracking recommendations that the CPRC's work in relation to the Anti-Social Behaviour report recommendation is ongoing. A Member updated that draft rules and a note from MOJ on FRC being implemented in October 2023 has been published.

## **ADMINISTRATION**

## **Strategy Workshop**

A paper was presented to Council proposing an additional Council meeting focusing on strategy. It was agreed that this is a worthwhile suggestion and that it would tie into questions about the Council's future work.

The Council agreed to the proposal for a strategy meeting to be held in-person. It was agreed that Exco, alongside several other Members, would consider the agenda in the first instance. Members were asked to volunteer to participate.

It was suggested that every Member should be tasked to submit an idea for future work, perhaps on an annual basis, so that all Members feel involved in the work of the Council. MOJ and HMCTS were asked to consider which topics they would like to input on.

A Member suggested that the Council might explore funding from research Councils to support the CJC's work, referencing Ernest Ryder's speech at the previous National Forum. The Secretariat agreed to explore this avenue. It was also suggested that, rather than seeking funding, the CJC could collaborate and publish with other bodies; it was confirmed that there is precedent for this.

## **Future Work**

A paper on housing disrepair was shared with the Council for consideration, which was extensively discussed by Members. It was agreed that the Council would wait until after the anticipated Bill is published by the Department for Levelling Up, Housing and Communities (DLUHC) before starting any work in this area.

The Federation of Small Businesses (FSB) wrote to the Council seeking help to bring about change to the 1974 Solicitors Act and 2007 Legal Services Act, in relation to reserved activities. It was suggested that the issue highlighted by FSB in its letter might be solved by amendment of the Acts mentioned. The CJC has recommended change to the 1974 Act in its Costs report; the CJC could consider FSB's point alongside that if the Council agrees. It was agreed that the topic should be discussed further at the planned Strategy meeting.

## **Recruitment**

The Secretariat gave a brief update regarding appointments and recruitment: a new District Judge member is expected to have been confirmed in advance of the Council's next meeting. Six non-judicial Council vacancies have recently been advertised through the public appointments process. Interviews for these posts will be held in May.

## **Executive Committee**

The Secretariat updated the Council that the Shadow Committee established in 2022 had now been replaced by a substantive Executive Committee, following the conclusion of a formal nomination process. The committee in its current form will be in place until the end of 2023 and will continue to meet monthly.

## **ANY OTHER BUSINESS**

### **Consultation responses**

The Council gave its thanks to the Member who responded to MOJ's consultation on the publication of Civil Justice Quarterly Statistics on behalf of Council. A note was circulated ahead of the meeting outlining several consultations that are currently open and may be of interest to the Council. Those consultations were: (a) MOJ consultation on help with fees, (b) Law Commission consultation on Arbitration Act 1996, and (c) Family Procedure Rule Committee consultation on Domestic Abuse Protection Orders (DAPO) Pilot.

On help with fees, Members were asked to volunteer by email if they were willing to lead the Council's response. On the Arbitration Act 1996, Council agreed that it was an area that would likely be of more interest to the arbitration council than to the Council. The Chair tasked MOJ with examining the detail of the consultation and reporting to the Secretariat if there were any aspects on which the Council may want to comment. On the DAPO pilot, it was agreed that that a response from Council could be valuable. A Member felt that a small subgroup would be required to collate a response to cover all areas of the response. This Member was tasked with reviewing the detail of the consultation and notifying the Secretariat if they felt a response was required.

#### **Churchill vs. Merthyr Tydfil**

The Council was named in a note by Andrews LJ ahead of the Churchill vs Merthyr Tydfil case being heard in the Court of Appeal in a couple of months' time. The Council was asked to decide if it would like to intervene. It was unanimously agreed by Council that it was not for the Council to intervene.

#### **Members' 1:1 Meetings Feedback**

Following the first tranche of one-to-one meetings with members, a paper was shared with Council setting out the common themes which had emerged. This item was for information only and was not discussed.

The next meeting will take place on 14 July 2023.