



Friday 27 January 2023

MEETING OPENING

The Chair welcomed first-time attendees, as well as the new Deputy Director for Civil Justice in the Ministry of Justice (MoJ) and recorded the Council's thanks to the previous Deputy Director. The Chair recorded Council's thanks to the lay member of the committee who has stepped back from the Council after three terms in the role.

There were several amendments proposed to the minutes of the previous meeting. The minutes were **APPROVED** subject to these changes. The action log was reviewed.

WELSH INTERESTS

It was agreed at the previous meeting that a standing invite should be extended to the Welsh Government to observe Council meetings. It was also decided that papers would be shared, and agenda items of interest flagged. The Council agreed both that Welsh interests will be a standing agenda item for future meetings and that the Member for Welsh Interests would discuss with the Executive Committee which item would be discussed at the next Council meeting.

UPDATES ON CURRENT WORK

MoJ

MoJ provided a paper which updated on civil priorities, the consultation on increasing the use of mediation in the civil justice system, Whiplash, Fixed Recoverable Costs (FRC), updates to the Civil Procedure Rules (CPR), the project to simplify the CPR, the Online Procedure Rules Committee (OPRC), and housing possession reform.

MoJ observed that there is a huge amount of work taking place in the civil system on addressing problems, modernising, and reform. They specifically flagged work on costs and enforcement.

A Member requested an update on the publication of the evaluation of the housing mediation pilot. MoJ expect the evaluation to be published before the Council's next meeting.

The Chair enquired about the date for the FRCs being introduced. MoJ confirmed that because of the additional work that the subcommittee has undertaken, it has been decided to move the introduction date from April to October.

The Chair suggested that it would be useful for the Council to hear how other legislative intentions of Government are likely to affect civil justice. MoJ confirmed that they are happy to provide broader updates on wider Government legislative intentions in the future and in advance of the next meeting. Members were asked to reach out to the Secretariat ahead of the next Council meeting to highlight any areas of interest.

HMCTS

HMCTS presented a paper that responded in part to the discussion on data at the previous meeting. They also provided an update on Management Information (MI) from their systems; performance; change initiatives; Reform; damages; small claims mediation and sitting days.

Several Council members raised concerns about data: a judicial member raised the issue of available data around mediation. They asked HMCTS to review the information that is provided to the allocating judges via the online system about what happened at the mediation. .

HMCTS offered to look further into the data and to share the results of ongoing work on opt-in and opt-out when they are available.

Another member raised protected characteristics data, which the Council had previously requested to see and has been made available in other jurisdictions. They highlighted its importance for the design of future services.

HMCTS confirmed this data is not captured in legacy services. It is collected in OCMC (Online Civil Money Claims), divorce and probate services, but not in Damages yet. HMCTS agreed to consider how best to share this information. The Chair urged that this information be shared as soon as possible.

CPRC

The Chair of the working group updated on CPRC work on FRC extension, Qualified One-way Costs Shifting (QOCS), Domestic Abuse Protection Order (DAPO), the rolling consultation on simplifying the CPR (which continues to have interest from wider users), and mandatory mediation in the small claims track. They advised that the CPRC are establishing a working group to look further at mandatory mediation and offered to discuss the above point, raised by the judicial member, with the working group.

Lastly, they shared the latest injury claims portal statistics and the Court of Appeal *Robot and Briggs* judgment.

Data

There was a discussion about the Council's interest in data, as well as the difficulties it faces accessing data, especially as the civil justice system becomes increasingly digitised.

A Member considered the pressure that HMCTS currently faces and stressed that receiving ad hoc data requests from Council is not the best way to structure planning. HMCTS indicated that they would be happy to participate in a working group that sought to define the standard data set needed to spot problems in civil justice and identify transparency and accountability.

It was agreed that a Data working group would be established and that it would not only request data but also think about how to leverage other resources to access the data that the Council would like.

The Chair of the working group agreed to provide a paper for the next Council meeting and volunteers for the working group were asked to contact the Secretariat.

Quarterly Statistics Data

The Secretariat noted that MoJ are conducting a user consultation on the Civil Justice Quarterly Statistics and asked if the Council wished to respond given its interest in data. It was suggested that the Chair of the Data working group lead on this response.

Costs

A draft report was summarised by the Chair of the working group and thanks were recorded to all members of the working group. The significance of costs budgeting was highlighted: the group recommended that one size does not fit all.

The Council considered that, overall, the report was clear, balanced and would be significantly useful.

It was agreed that the report will be finished, and that the Council were content to approve outside of Council. The Council will consider the response to the report before deciding next steps.

Pre-Action Protocols (PAPs)

It was noted that the Chair of the working group had sent his apologies but welcomed Council's view on the report.

There was extensive discussion around the content and message of the report. It was suggested that the report raises questions about the scope for rulemaking in the pre-action space and that it did not resolve the confusion surrounding the pre-action space.

The importance of the report's message aligning with that of the Costs report, as well as being conscious of the current work of MoJ and HMCTS, was strongly underlined. It was agreed that the report should be resubmitted to Council following amendments. Council supported the suggestion that the moving target of the commission from Council and the number of changes that have occurred since commission be acknowledged at the top of the report. Members were asked to submit any further comments and feedback to the Secretariat.

A Member advised that the Council should also consider its scope and role, suggesting that redrafting PAPs appeared to push up against the function of the Council. It was noted that the Council's statutory function did include the recommendation of changes to the CPRC. Historically the Council drafted PAPs before this was transferred to CPRC in 2012. It was agreed that this point should be considered in a later meeting.

Procedure for determining Mental Capacity in Civil Proceedings

The Chair produced a short report of the work of the group, who have met monthly since September, and with a programme of looking at different stages in proceedings. They shared that the group have slightly departed from their initial timing schedule, but that the next steps are for the co-Chairs to draft a report for discussion. Both are thinking about the next phase of evidence gathering, whether by consultation or small group meetings.

It was stressed that the questions raised by the group, such as how capacity issues are identified and not identified or what should be done to ensure that they are highlighted and resolved, are

important. It is therefore crucial that the group report what ought to happen in these situations and provide an appropriate course of action to be taken.

ADMINISTRATION

Website Updates

The Secretariat provided a review of the ongoing website update and requested that Members contact the Secretariat if their biography required updating.

Appointments

The Secretariat gave a brief update regarding appointments.

Executive Committee

The Secretariat set out the three papers from the shadow Executive Committee for the Council's approval. An addition to the policy for non-members joining Council working groups was suggested and the papers were approved subject to this change.

National Forum Feedback

The Secretariat shared feedback from the National Forum and Members were asked for their own comments, particularly on the timing of the event – November, rather than December – and the venue. It was agreed that Friends House should be booked for November 2023 as the venue for the next National Forum.

The next meeting will take place on 28 April 2023.