Civil Justice Council

Annual Report 2005

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Foreword

The Civil Justice Council (CJC) has proved itself to be a highly respected and influential advisory body. Its success is a result of both the leadership of my predecessor Lord Phillips of Worth Matravers, and the commitment of the council members, who willingly give their time to the work of the Council.

As an advisory body, the CJC relies on establishing good relationships with those interested in reviewing the civil justice system and in furthering access to justice. We are fortunate to have formed an effective partnership with the Department for Constitutional Affairs, which is willing to listen to constructive criticism and work with the Council in these aims.

The CJC has established an effective formula for engaging with stakeholders. Take these examples.

The Clinical Negligence committee ran an away day to consider current legal issues affecting the assessment of care in clinical negligence/personal injury claims and the merits of a protocol/practice direction governing the management of evidence on care, and the merits and opportunities of benchmarking in respect of rates and/or hours of care. The committee is currently taking forward the recommendations, which are a major priority for 2006.

The Alternative Dispute Resolution (ADR) committee ran a well organised and highly successful judicial training event. The more judges are aware of the value of ADR the better. The CJC invited the newly formed Civil Mediation Council to devise a training programme that would enable participants, through role play exercises, to get a better 'feel' for the potential value of mediation in the overall dispute-resolution process. The 'faculty' were experienced mediators who were also qualified as mediation trainers. I am pleased to learn that The Judicial Studies Board is now planning further programmes for more judges.

I look forward to the coming year, with the CJC building on current achievements and meeting the challenges ahead. Indeed 2006 has begun with a very successful Costs Forum. The problems of costs and of the funding of civil litigation is to my mind crucial for the future.

It is not possible to thank the many individuals who have made significant contributions to the work of the Council this year, however I would like to express my thanks to David Bean, Nic Madge and Frances McCarthy who are standing down as council members, having dedicated a combined total 8 years, to the work of the Council. Finally I would like to thank the Chief Executive Bob Musgrove and the secretariat, especially Monique Deletant, who (I am sad to say) is leaving, after 4 and a half years of brilliant work.

Sir Anthony Clarke, MR

How the Council Works

The Civil Justice Council is a Non Departmental Public Body, sponsored by the Department for Constitutional Affairs. It was established under the Civil Procedure Act 1997 along side the provisions that paved the way for the most extensive reforms in the civil justice system for over a century. It was intended that the Council be more than a mere consultative body but rather should be a 'high powered body representative of all of the relevant interests which monitors the effects of the new rules in practice'.

The Primary role of the Civil Justice Council

The primary task of the Council is to promote the needs of the civil justice and to monitor the system to ensure that progress to modernise it continues. It advises the Lord Chancellor and his officials on how the civil justice system can be improved to provide a better justice system, reviews policy and procedures to ensure they improve access to justice, and monitors system procedures to assess whether they achieve their stated policy aims.

Statutory provision

The Civil Justice Council was established under the Section 6 of the Civil Procedure Act 1997 and is charged with

- Keeping the civil justice system under review
- Considering how to make the civil justice system more accessible, fair and efficient
- Advising the Secretary of State and the Judiciary on the development of the civil justice system
- Referring proposals for changes in the civil justice system to the Secretary of State and the Civil Procedure Rule Committee, and making proposals for research

Constitution

The Civil Justice Council, to fulfil its purpose effectively must provide a diverse and representative cross section of views from those who use, or have an interest in, the civil justice system. The Civil Procedure Act requires that membership of the Council must include

- Members of the judiciary
- Members of the legal profession
- Civil servants concerned with the administration of the courts
- Persons with experience in and knowledge of consumer affairs
- Persons with experience and knowledge of the lay advice sector
- Persons able to represent the interests of particular kind of litigants (for example businesses or employees)

Ex Officio and Preferred Memberships

Majority of the members serve fixed terms limited to two years. The Secretary of State, following recommendation by the Chair of the Civil Justice Council, makes appointments and re-appointments. All appointments are non remunerative, and accord with guidelines provided for ministerial appointments by the Office of the Commissioner of Public Appointments.

The Head and Deputy Head of Civil Justice are ex officio members of the Civil Justice Council. The Head of Civil Justice is the Chair. Preferred members are; The Chair of the Judicial Studies Board, a High Court judge, a Circuit judge (preferably a Designated Civil Judge), a District judge, a barrister, a solicitor representing claimants interests, a solicitor representing defendants interests, an official of the Law Society, a senior civil servant representing the interests of the Department for Constitutional Affairs or Her Majesty's Court Service, a representative of the insurance industry, an advice service provider, and a representative of consumer interests.

Structure of the Civil Justice Council

The Civil Justice Council comprises of a full Council of twenty-six members (including those ex officio). An Executive Committee comprises of the Chair, Deputy Head of Civil Justice, the Chief Executive, three Council members and a representative from HMCS.

Eight committees, comprising around one hundred members, undertake the Council's day-to-day activities. The Committees are; Alternative Dispute Resolution, Access to Justice (including responsibility for the Fees Consultative Panel and Public Legal Education Working Group), Housing and Land, Clinical Negligence and Serious Injury, Experts, Costs, Rehabilitation Policy Committee, and Rehabilitation Rules Group.

The Council and its committees are supported by a secretariat of civil servants. The Chief Executive of the Council is the senior executive and budget holder.

The Civil Justice Council will undertake activities commensurate with its statutory provision (Section 6 of the Civil Procedure Act).

Civil Justice Council Activities

Civil Justice Council activities are in the main dependent on the achievement of the Department for Constitutional Affairs in delivering its public sector agreement targets, and the success, as perceived by civil justice ''stakeholders'', of the department's policy, procedures and systems.

Top Level Objectives

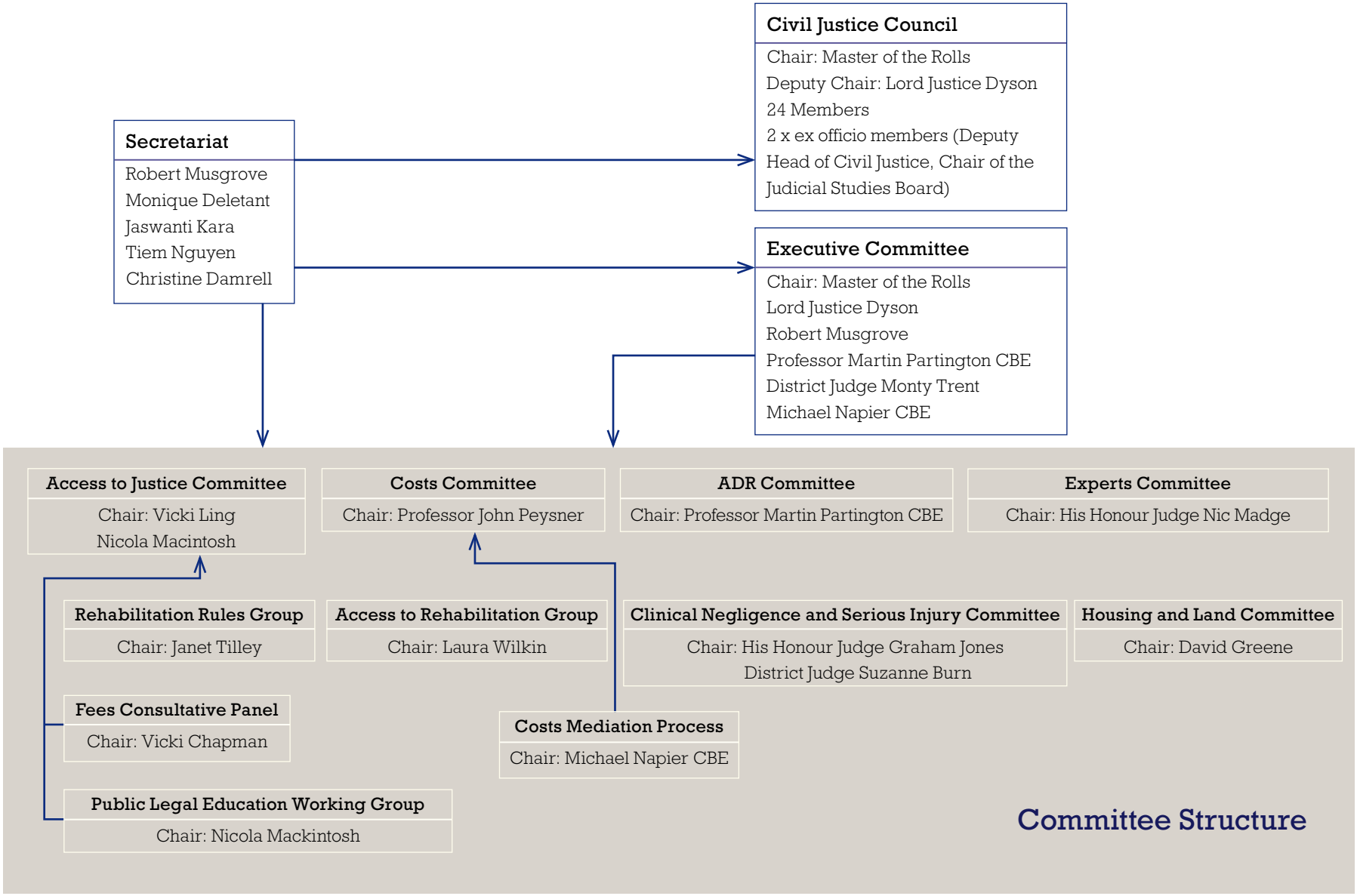
At top level the Civil Justice Council will achieve the following:

Advice to the Secretary of State on Consultation Papers issued by his department on civil justice related matters.

Advice to the Secretary of State on areas of concern, legal or policy, identified by the civil justice community through the Civil Justice Council.

Assistance in developing research ideas and policy solutions relating to civil justice issues of concern, and providing a representative view of civil justice "stakeholders" views during the development of policy or programmes.

Civil Justice Council Organisational Structure



Developments over the past year

The Civil Justice Council has coped with a heavy workload over the past year.

The beginning of the year saw the Council focussing on the Accreditation of Experts and whether this was both desirable and achievable. Participants at a forum run by the Civil Justice Council were not in favour of accreditation for all experts and although the Experts Committee of the Council has been monitoring the situation, it appears that this has not changed.

Following the Experts forum in 2004, the Council held a Big Tent meeting in June to discuss medical reports in Road Traffic Accident cases. Participants agreed that further research was needed into this area and a technical group met to consider specifications. The research will be undertaken in 2006.

An awayday for the judiciary was held under the guidance of the ADR committee. Judges present were able to see a 'mock' mediation in progress and tried their hand at mediating as well. The participants found the day so useful that the JSB has agreed to take forward the running of this event for other judges in 2006.

The summer saw another Council success on predictable costs with agreement reached on Employers Liability Disease success fees and August brought about the simplification of Conditional Fee Agreements.

Following years of separate guidance for Experts, the Civil Justice Council published its ''Protocol for the instruction of expert witnesses in civil claims''. Drafted by Mr Justice David Bean and HHJ Nic Madge, the protocol has the backing of both the Academy of Experts and the Expert Witness Institute.

The Civil Justice Council published its funding paper ''Improved Access to Justice – Proportionate Costs and Funding Options'' in September. This was the product of a number of years of research both in Britain and other jurisdictions and marks the beginning of a closer relationship between the Civil Justice Council and representatives from other jurisdictions.

The Clinical Negligence and Serious Injury Committee focussed on care claims at an awayday held in October. The participants recommended that the committee should consider producing best practice guidance for solicitors instructing care experts. This work is currently being taken forward by the Clinical Negligence and Serious Injury Committee.

The Housing and Land committee held a consultation into a Rent Arrears protocol and work is continuing in this area.

The end of the year saw the Civil Justice Council begin work on a lower transactional costs model which saw representatives from the legal profession working together on a new proposal. Work will continue on this in 2006 as the Council works in partnership with the Department for Constitutional Affairs on issues surrounding the perception of a compensation culture.

Committee Members

Vicki Ling and
Nicola Mackintosh (Chairs)

Vicki Chapman (Chair of Fees Consultative Panel)

Nony Ardill
Carlos Dabezies
Anna Edwards
Richard Grimes
Tony Guise

Hilary Lloyd
Dan Mace
Bob Nightingale
Atul Sharda
Brian Havercroft

Reports from the Civil Justice Council Committees

Access to Justice

Terms of Reference

To promote awareness of civil justice including making recommendations for improving service delivery, and improving access to advice, information and representation

To consider existing practice and procedure in the civil justice system and make proposals to the Council for improvement

To monitor and comment on the effectiveness of existing practice and procedure in the civil justice system, including the provision of advice, and to make proposals for improvement

To take forward research undertaken on behalf of the Civil Justice Council into the operation of the civil justice system

To monitor and keep abreast of developments, and respond to proposals as appropriate

Court Fees

In September 2005 the Department for Constitutional Affairs published a consultation paper proposing further increases in civil and family fees. In responding, the Council expressed serious concerns about the impact of further substantial increase so soon after the last significant increase, less than a year ago. We commented that further increases would inevitably result in a vicious circle, by dissuading potential litigants from using the court, resulting in less fee income, further cuts to services and further fee increases.

The Council has called on the DCA to undertake some research into the impact of increases in fees to establish the impact on access to justice. We are concerned that continual increases in fees seriously threatens access to justice for those on low or modest incomes who do not qualify for fee exemption or remission, or for legal aid. The failure to properly estimate the income required demonstrates that the department does not possess sufficiently reliable data on which to base assumptions about the volume of business – and therefore the necessary level of income – to be raised from court fees.

We also reiterated our concern[1] that the very significant increases in fees in recent years means that the policy of recovering the full cost of running the civil courts, less exemption and remission, from court users, is fundamentally at odds with the aim of ensuring access to justice as set out in S92(3) Courts Act 2003:

> ''When including any provision in an order under this section, the Lord Chancellor must have regard to the principle that access to the courts must not be denied.''

We argued that fees should not be set at a level which might prevent access to justice and should be proportionate. Proportionality should be the primary factor in determining the level of fees. The only way to resolve tension between the significant increases in fees and access to justice is for a fundamental review of the underlying policy.

A copy of the full response is available on the Civil Justice Council website at www.civiljusticecouncil.gov.uk

Public Legal Education Working Group

The Public Legal Education Working Group has continued its work in relation to raising the profile of civil justice issues, particularly among younger people, including the citizenship programme in schools.

One of the main recommendations of the Group's awayday in March 2004 was that there was an urgent need for a single independent Public Legal Education agency to be created. The role of such an agency would be to collate existing materials available to the public, identify gaps in provision and need for development in particular areas, and develop a cohesive strategy for future education programme. The need for an agency was also clearly stated by partners such as the Citizenship Foundation, Advice Services Alliance, and Legal Action Group, who consulted widely on the Public Legal Education issue during 2005.

We are pleased that this recommendation has been adopted by the DCA which has recently announced the creation of a Public Legal Education Task Force, chaired by Professor Hazel Genn. We will continue to play an active role in relation to the work of the Task Force over the forthcoming year.

Work is also ongoing regarding the effectiveness and development of Community Mediation schemes and how these may assist in resolving disputes in the community without recourse to litigation and whilst ensuring that access to justice is secured.

The Access to Justice Committee of the Council has provided a contribution to the review of legal aid undertaken by Lord Carter (the 'Carter Review'). Although the primary focus of the review is high cost criminal cases, the review team has been particularly interested in problems affecting practitioners and clients in the civil arena and concerns about the demise of the civil legal aid system have been expressed by the Committee.

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[1] For the Council's full argument see: Full Cost Recovery: A paper by the Fees Sub Committee. Published November 2002

The Committee has also responded to consultations such as the Community Legal Service Strategy which sets out the LSC's vision for civil legal aid in the forthcoming years.

There has also been constructive liaison between members of the Committee and the Legal Services Commission in relation to analysing the experience of people in need of legal advice and representation and the costs involved in securing access to justice. A conference is planned for early 2006 involving major stakeholders to look at the stages and costs involved in resolving housing disputes. It is proposed that this valuable work is also extended to other areas of law in future, in order to improve the system generally by making recommendations for any legislative or rule changes, or other amendments to the existing system which will lead to improvements whilst securing access to justice.

Vicki Ling, Nicola Macintosh and Vicki Chapman
Chairs

Committee Members

Professor Martin Partington CBE (Chair)
Professor Hazel Genn CBE
Professor Geraint Howells
District Judge Terence John
Michel Kalipetis QC
Robert Nicholas
Stephen Ruttle QC
Colin Stutt
Tim Wallis

Alternative Dispute Resolution (ADR)

Terms of Reference

To undertake activities relating to supporting the use of ADR in the civil justice system

To promote such conferences, seminars and other meetings as seem appropriate and can be resourced designed to develop the use of ADR in the civil justice system

To provide a forum for the consideration by the judiciary and ADR providers of new initiatives relating to the use of ADR

To provide advice to Government and other agencies, through the Civil Justice Council, about developments relating to ADR which the Committee thinks should be advanced

To draft responses to papers coming from Government both in the UK and Europe and from other bodies about the development of ADR

To provide assistance to Government and other bodies about issues – including training – relating to the use of ADR

This year, the ADR Committee has three principal items to report.

First, its proposals for amendments to the Civil Procedure Rules were taken on board by the Civil Procedure Rules Committee. A number of important amendments to the rules relating to ADR were made in June 2005. These provided that in such cases as the court thinks appropriate, the court may give directions requiring the parties to consider ADR. These were largely the result of the work of the Committee.

Second, we ran an extremely successful judicial training event. 15 carefully selected judges were brought together for a day and received a mixed programme of instruction, watching a demonstration mediation, and – most important – taking part themselves in a role play exercise. The purpose of the event was not to turn judges into mediators. Rather it was designed to give them a better 'feel' for the power of mediation as a dispute resolution tool than can be obtained just from hearing a short lecture or watching a video (which is how judges have hitherto received training on ADR). In this way, it was hoped that in exercising their case management powers, judges would have a better idea of when use of mediation would be appropriate. The exercise was extremely successful, with very positive feedback reported. The Judicial Studies Board is now planning to roll out a similar programme for more judges.

Third, the Committee helped with the planning and implementation of the DCA's mediation week (held in October-November 2005). This was an extraordinarily successful event which demonstrated great enthusiasm for the use of ADR and revealed an increasing number of contexts in which the use of ADR is now being contemplated.

I would like to thank all those who contributed to the work of the committee in 2005 and I look forward to the continuing developments in ADR in 2006.

Martin Partington
Chair

Committee Members

His Honour Judge Nic Madge (Chair)

Michael Cohen
John Cowan
Simon Davis
Richard Fairclough
Mark Harvey
Alan Kershaw

Claire McKinney
Simon Morgans
Robin Oppenheim
Andrea Scotland
John Stacey
Dr Robert Watt

Experts

Terms of Reference

To evaluate the operation of the civil justice system in its approach to and utilisation of expert evidence

To make recommendations for the modification and improvement of the civil justice system in relation to expert evidence, including Civil Procedure Rules and Practice Directions, with a view to furthering the overriding objective

To consider and make recommendations as to the rôle and status of expert witnesses, including in relation to alternative dispute resolution

To consider and make recommendations as to the accreditation, training, professional discipline and court control of and communication with expert witnesses

To consider and make recommendations as to the fees and expenses of expert witnesses

The Experts' Committee achieved much in 2005 through a series of short focussed meetings – entirely due to the hard work of its committee members behind the scenes.

On 22nd June 2005 Lord Phillips of Worth Matravers (then Master of the Rolls) formally launched the *Protocol for the Instruction of Experts to give Evidence in the Civil Courts* on 22nd June 2005. It came into force on 5th September 2005 and is available on the Civil Justice Council web-site (www.civiljusticecouncil.gov.uk). It is the result of discussions which have taken place over a number of years and incorporates what is already best practice followed by the vast majority of experts and those who instruct them. It is hoped that it will be used as a tool by the courts, lawyers and experts to help the few experts and lawyers who do not follow either the letter or the spirit of CPR Part 35 and its Practice Direction to do so.

Accreditation of experts remains an important issue. The Civil Justice Council held *Experts Forum II on Accreditation* between 3rd and 5th March 2005 at Wokefield Park, Reading. The Forum was chaired by Mr Justice David Bean and delegates included representatives from the Legal Services Commission, Expert Witness bodies, Royal Colleges, the BMA and several professional bodies including the GMC, the Bar Council and the Law Society. After lively debate at the Forum and discussions in the Experts' Committee, the Civil Justice Council has concluded that it would be opposed to any proposal for compulsory accreditation of expert witnesses. The additional burden in cost and time that this would impose on expert witnesses would outweigh the benefits. There are though clearly advantages in having voluntary accreditation schemes. The Civil Justice Council's statutory role does not extend to promoting or organising schemes for accreditation of experts. However members of the Experts' Committee have been meeting and are well on their way towards agreeing some principles of best practice for the accreditation of experts.

The Committee responded to the Consultation Paper *The Use of Experts Quality, Price and procedures in publicly funded cases* issued by the Legal Services Commission. The response, drafted by HHJ Graham Jones, expressed concerns about a number of the proposals and it now appears that the LSC is rethinking its approach.

Following *Experts Forum I on medical reporting fees*, which took place in November 2004, discussions have continued throughout the year on the possibility of agreeing guideline fees for typical experts' fees in low value personal injury claims.

Towards the end of 2005, the Experts' Committee started to consider issues relating to the appointment of Single Joint Experts (CPR 35.7) and concerns which have been expressed by some practitioners about apparent inconsistencies in approach in different parts of the country. It is hoped that it will be possible in 2006 to agree some broad criteria to help practitioners and judges increase consistency in their approach.

Nic Madge
Chair

Committee Members

His Honour Graham Jones and Suzanne Burn (Chairs)

Janet Howe
Alistair Kinley
Bertie Leigh
Russell Levy
William Norris
District Judge David Oldham
John Pickering

Steve Thomas
Dr Christine Tompkins
Master John Ungley
Steve Walker
Adrian Whitfield QC
Laura Wilkin

Clinical Negligence and Serious Injury

Terms of Reference

To consider and monitor current problems and proposals in the law and practice of clinical negligence and serious injury claims

To make comments and proposals to the Council on the law and practice of clinical negligence and serious injury claims that are focused, practical and deliverable

Not to duplicate work being carried out by others on aspects of clinical negligence and serious injury claims

The workload of the Committee has continued to be heavy.

Periodical Payments

In April 2005 changes to S 2 of the Damages Act were implemented with regard to periodical payments, together with all the consequential changes to the CPR. The Committee had been closely involved in the policy issues, and the drafting of the rules and practice directions The Committee had some input in 2005 to the guidance issued to judges, and urged the DCA to ensure the guidance was sent to all judges handling civil work. The Committee is monitoring the operation of the new regime in practice. Towards the end of the year the Committee alerted the DCA to a particular problem in that the legislation for the new NHS Foundation Trusts did not give them the power to comply with personal injury damages awards made by way of periodical payments. The DCA agreed to try to resolve this with the Department of Health.

Care claims

Early in the year the Committee decided to take forward some very useful work on claims for care that had been started during the Woolf enquiry in the late 1990s. The working group was reconvened and produced drafts of model instructions for care experts, a questionnaire for claimants and a model report. A very successful awayday of stakeholders took place on 14th October 2005. Agreement was reached in principle to the incorporation into best practice guidance of a standard letter of instruction to a care expert, a standard form of report, and a schedule in appropriate form, subject to further work on the detail. There was some disagreement about the content and timing of a proposed questionnaire to the claimant about their future care needs, about who should complete the questionnaire, the claimant or their solicitor and the appropriate time for this. It was agreed, including later by the Serious Injury Committee, that this issue merited further discussion. The Awayday also discussed, and the Committee agreed to look further into, the possibility of producing some guidance on "benchmark" rates to be paid for care, and on a starting point "benchmark" for the number of hours of "regular" care required by an "ordinary" child, depending upon the family circumstances.

Group Claims

The Committee discussed the problems being experienced with the conduct of group injury claims. Further work by the Committee was put on hold pending the outcome of the Council's generic work on costs and funding of claims, including in relation to group actions. The Council published a report on this wider issue in September 2005. At the final meeting of the year, the Committee agreed in principle that further work might be merited, including on the procedural problems of group injury actions. This will be carried forward in 2006.

Interface between the public provision for future housing and care for seriously injured claimants and their private law claims

The Committee discussed this issue on a number of occasions, including at the care claims Awayday. It was decided that in the light of the absence of clear legislative provisions on the issue, or guidance from the court, as to who should bear the costs of caring for a seriously disabled accident victim who was entitled to public assistance with his needs, the Committee should prepare a discussion paper on alternatives for resolving the issue. A draft had been prepared by October 2005. This work will be taken forward in 2006.

The Burden of Proof

In April the Committee discussed a paper which proposed that, in clinical negligence claims, the burden of proof should no longer be on a claimant to prove there had been negligence by the health care provider, but on the defendant to prove there had not. The Committee provisionally concluded that this fundamental change in the law could cause problems in medical practice, and also could raise a presumption that whenever there was an adverse clinical outcome from a medical procedure there had been negligence by the health care provider. It was agreed to take this issue further to the limited extent that any problems in disclosure of information by the defendants might be addressed by changes to the clinical negligence pre-action protocol and that the Committee would consider this in due course.

Other Work

The Committee contributed to the response of the Council to the Legal Services Commission's consultation paper on the Use of Experts in Litigated Claims.

The Committee agreed to become involved in the DCA work on damages & to respond to any consultation papers when they were published.

The Committee agreed to include in its future programme of work the issues of indemnities for future loss, and the valuation of future loss claims in relation to housing (Roberts v Johnston claims).

Suzanne Burn and Graham Jones
Chair

Committee Members

David Greene (Chair)

David Carter
David Cowan
John Gallagher
Jon Hands
District Judge Nic Madge
Derek McConnell
Nicola Nuttal
Andrew Pearson
David Watkinson
District Judge Jane Wright

Housing and Land

Terms of Reference

To consider and respond to proposals relating to civil procedure specific to housing and land cases

To consider existing court rules and practice relating to housing and land cases and make proposals to the Council for improvement

To monitor proposed and existing housing legislation for its impact on procedure and make such response as appropriate

The resolution of disputes in housing, and particularly in disrepair claims and possession, has been prominent in debate as to access to the courts, the availability of expert advice and alternatives for resolution throughout 2005. In the past year the Committee has been addressing these issues and taking part in that debate.

The Housing and Land Committee has been working throughout the year on the project to introduce a pre-action protocol for possession claims arising from arrears of rent. This work has been done in co-operation with the Department for Constitutional Affairs. In June 2005 the Civil Justice Council issued a consultation paper on the draft protocol. The summary of the response is on the CJC website at www.civiljusticecouncil.gov.uk. A total of 168 responses to the consultation paper were received from local and national Government bodies, the judiciary, legal professional bodies, landlord and tenant organisations and voluntary organisations. A large majority supported the introduction of the protocol. A majority also foresaw that the protocol would have beneficial impact on their businesses or sectors. The protocol is primarily intended for registered social landlords but should also in part apply to the private sector.

As a result of the consultation the draft protocol has been amended and is to be submitted to the Civil Justice Council and it is hoped to the Civil Procedure Rules Committee during the course of 2006.

During the course of the year the Committee has been working with the DCA Working Party on Housing Disputes. This working party has at least in part been directing itself towards the pre-action protocol. The committee has also been considering the future of public funding of housing dispute cases and in early 2005 had a meeting with the Legal Services Commission. Although housing disputes is a significant part of the review of public funding, the review is wide in scope. The Access to Justice Committee of the Civil Justice Council is liaising directly with the Legal Services Commission on all of the issues raised. The Housing and Land Committee has in turn been discussing issues of particular relevance to housing claims with the Access to Justice Committee. This work is continuing.

The committee has also been considering over the past year the training for the judiciary in housing matters, the use of Ground 8 for possession cases, particularly following the decision in *North British Housing Association Ltd v Matthews*, and the civil process in relation to anti-social behaviour and the effect of court process and decisions on tenancy agreements.

Work Plan 2006

The committee is expecting to submit the draft pre-action protocol for possession cases to the Civil Justice Council at its meeting in February 2006. Subject to the approval of the Civil Justice Council, the pre-action protocol will be submitted to the Civil Procedure Rules Committee. Subject to time being found, the protocol should be published in mid-2006 to come into effect during the autumn 2006.

The committee will continue to liaise with the Access to Justice Committee in relation to reform proposals for public funding. The committee expect to take part in direct discussions between the Civil Justice Council and the Legal Services Commission during the course of the year.

The committee will continue to maintain a review of possession cases using Ground 8. The committee is also considering the subject of mortgage possession proceedings and the possible instruction of a process similar to a pre-action protocol for such claims.

The committee has recently been discussing with the Law Commission a forthcoming consultation paper on housing disputes. On publication the committee will consider the consultation paper and make formal submissions.

David Cowan and Andrew Pearson both left the Committee in 2005. They have both made an important contribution to the work of the Committee over the past years for which the Committee is grateful.

David Greene
Chair

Committee Members

Laura Wilkin (Chair of Policy Group)
David Hooker
Lord David Hunt
Robert Musgrove
Mike Napier CBE
Janet Tilley
Professor Lynne Turner-Stokes
Janet Tilley (Chair of Rules Group)
Valerie Jones
David Marshall
Claire McKinney
Anna Rowland
Ashton West
Laura Wilkin

Access to Rehabilitation Policy and Rules Group

Terms of Reference

To consider how to make rehabilitation play a more central role in the compensation system

To provide a forum for consideration of initiatives relating to the use of rehabilitation

To undertake activities that will promote early rehabilitation in appropriate cases

To promote conferences, seminars and meetings as appropriate to develop the use of rehabilitation in the civil justice system

To draft responses to papers coming from Government and other bodies about the development of rehabilitation

To provide assistance to Government and other bodies on issues relating to the use of rehabilitation within the civil justice system

During the year, the Rehabilitation Rules Working Group has considered amendments to the pre-action and civil procedure rules that may help to promote early rehabilitation. Members of the Access to Rehabilitation Group have participated in rehabilitation initiatives by the DCA and Department for Works and Pension which aim to promote rehabilitation and embed it within the claims process. Members have also contributed to the work of the many voluntary groups who are active in this area. The Committee has facilitated a meeting between the British Society of Rehabilitation Medicine and the insurance industry to explore the scope for cross industry agreement on a rehabilitation protocol for treating clinicians drafted by BSRM and begun to explore the scope for common standards for providers.

Future Projects

Two projects are likely to engage the Committee in the months ahead.

Firstly, to gain further understanding of developments in the use of rehabilitation, both at practical and policy level and to continue our involvement in initiatives intended to embed rehabilitation into the compensation system.

Secondly, and in conjunction with the ADR Committee, to explore the relationship between ADR and early rehabilitation and to consider the scope to facilitate agreement on common standards for rehabilitation providers and/or case managers.

Laura Wilkin and Janet Tilley
Chairs

Committee Members

Mike Napier CBE and Professor John Peysner (Chairs)

Senior Costs Judge Peter Hurst
Robert Musgrove
Kevin Rousell

Costs Committee and Working Groups

Terms of Reference

To monitor and comment on the effectiveness of existing costs practice and procedure in civil justice system, including the provision of advice, and to make proposals for improvement

To work in partnership with Government officials, academics, and appropriate stakeholders to develop workable solutions to the areas of costs identified as requiring priority attention at the Costs Forum

To work in partnership with representatives of the costs ''industry'' to develop effective solutions to costs problems that may affect adversely access to justice, and the efficient operation of the courts or those who provide litigation services

To contribute stakeholder views to proposed changes in costs law and procedure

2005 has seen another busy year for the costs committee of the Civil Justice Council whose programme of work has included:

- Continuation of its role as mediator (invited by relevant organisations) to assist in negotiations towards ''industry'' agreement in further areas of predictable costs.
- Publication in August 2005 of the Civil Justice Council's report ''Access to Justice – Funding Options and Proportionate Costs''.
- Completion of the process of simplification of conditional fee agreements, working closely with the Department for Constitutional Affairs.

Predictable Costs

- **Success fees in industrial disease cases:** as a result of further mediation work the Civil Justice Council was pleased to be able to report to the Department for Constitutional Affairs in April 2005. An 'industry' agreement on levels of success fees to be paid in conditional fee cases in claims relating to industrial disease caused by asbestos, vibration white finger and industrial deafness among others. After receiving ministerial approval the agreement was implemented by the Rules Committee in CPR Part 45 effective from October 2005.
- **Success fees in defamation cases:**
  Following the forum held in 2004, the proposal to gather data to assist a mediation process was not proceeded with during 2005. This was because of the decisions pending from the House of Lords in King v Telegraph and Campbell v MGN. Now that those decisions have been handed down the Civil Justice Council is in discussion with the relevant parties on how to proceed towards a mediation process.

- **Success fees in public liability/personal injury cases:**
  The concentration of activity in the other areas of this report has prevented further work in 2005 in this area of success fees. It will be included in the programme of work for 2006.
- **Predictable after the event insurance premiums:**
  Although this aspect of costs in conditional fee cases has presented the most difficult challenge, a forum hosted by the Civil Justice Council in July 2005 made considerable progress in analysing areas where predictability might be introduced. To facilitate further discussion data will be analysed by Professor Paul Fenn of Nottingham University.
- **Predictable fees for medical reports:**
  Following the forum in November 2004 when a set of four principles was reached (see Annual Report 2004) the Civil Justice Council hosted a "big tent" meeting in June 2005 which further analysed the four principles and agreed on a data gathering exercise by Professor Paul Fenn. Since then there have been a number of decisions at District Judge/Costs Judge level concerning the fees of medical report agencies. The decisions are not entirely consistent with each other and it is to be hoped that during 2006 either the Civil Justice Council will resolve matters with a clear industry agreement or that authoritative guidance will be given by the Court of Appeal.
- **Predictable costs in RTA cases below £10,000:**
  At the request of the relevant stakeholders the Civil Justice Council has hosted a series of meetings during 2005 with a view to simplifying the process of handling road traffic claims below £10,000. This work will continue in 2006 alongside the two year review that is due in relation to levels of fees under the fixed recoverable schemes.
- **"Access to Justice – Funding Options & Proportionate Costs" (Civil Justice Council Report August 2005):**
  The lengthy process of Civil Justice Council research into litigation funding and access to justice issues in other jurisdictions (see Annual Report 2004) was completed in 2005. The Civil Justice Council's Report comprising 21 recommendations was published in August 2005. As its title suggests, the Report, consistent with the Civil Justice Council's statutory terms of reference to monitor and promote access to justice, makes the connection between (i) the problem of funding litigation (ii) the problem of costs being proportionate, and recognises that these are the two essential supports of a civil justice system that is accessible to those seeking redress. The Report offers a predictable and proportionate costs package across the spectrum of litigation, from small claims to multi track and is to be viewed as a whole. It proposes, perhaps controversially the 'last resort' introduction of contingency fees as a means of providing access to justice in group actions, as well as urging further consideration of the long debated Contingency Legal Aid Fund. The wide scope of the Report can be seen in its final recommendation that gives support to proposals to introduce the mechanism for the recovery of costs by a successful pro bono assisted litigant, provided that such costs are paid to a pro bono charitable organisation. In late February 2006 the Report will be discussed at a special forum hosted by the Civil Justice Council.

2006

The Civil Justice Council will continue to make itself available to interested parties who seek its help in reaching consensus on the many cost issues that remain in a still troublesome area of the civil justice system. It also hopes to see implementation of the recommendations in its Report (above) in conjunction with stakeholders and the Government's Better Regulation Task Force.

Mike Napier CBE

Articles and Publications on Civil Justice Council Issues

Protocol for expert witnesses in civil claims – an introduction

By Nic Madge
Circuit Judge, Harrow Crown Court

The Civil Procedure Rules have, since they were introduced in 1999, transformed civil litigation. However, earlier this year, the Civil Justice Council considered that there were two areas of practice which still needed particular attention – costs (probably the greatest failure in the Woolf reforms) and expert evidence. It was over five years since Sir Louis Blom-Cooper QC was asked by Sir Richard Scott, VC to chair a working group to prepare a Code of Guidance on Expert Evidence. Agreement had not been reached and there were at least two conflicting codes. As a result, Lord Phillips of Worth Matravers, the Master of the Rolls, decided that the time for discussion was over. Mr Justice David Bean and I were asked to draft a single code of guidance on expert evidence.

Very soon we decided that time had moved on from the early days of the CPRs when the existing codes had been drafted. We thought that it would be better to prepare a protocol, which could sit along side the existing CPR protocols on Personal Injury, Clinical Disputes, Construction and Engineering Disputes, Defamation, Professional Negligence, Judicial Review and Housing Disrepair Cases. The aim of protocols is to encourage the exchange of early and full information and to support the efficient management of proceedings where litigation cannot be avoided. Courts expect parties to comply with protocols, although they are unlikely to be concerned with minor infringements. If protocols are not complied with, judges may make orders as to costs, deprive parties of interest to which they would otherwise be entitled, or apply other sanctions. (See the Practice Direction on Protocols, Civil Procedure (The White Book), vol.1, para C1-001.)

In drafting the Protocol we found that the hard work had already been done for us. We drew heavily on the contents of the existing codes, selecting the best passages from each. The protocol was discussed in the experts' committee of the Civil Justice Council and modified as a result of those discussions. It was approved by Lord Phillips and formally launched by him as the Protocol for the Instruction of Experts to give Evidence in the Civil Courts on 22nd June 2005. It came into force on 5th September 2005. It is available on the Civil Justice Council web-site (www.civiljusticecouncil.gov.uk) and will be incorporated into the White Book.

There is nothing radical about the Protocol. We hope that it incorporates what is already best practice followed by the vast majority of experts and those who instruct them. We hope that it will be used as a tool by the courts, solicitors and experts to help the few experts and solicitors who do not follow either the letter or the spirit of CPR Part 35 and its Practice Direction to do so.

This article was originally published in Clinical Risk in November 2005 (Volume 11, Page 231), and has been reproduced with the permission of the Royal Society of Medicine Press.

A contingent future – funding reform

Extract from Litigation Funding October 2005
By Neil Rose

The Civil Justice Council (CJC) is undoubtedly one of the better developments to come out of the Access to Justice Act 1999 – which is just as well, given that many of the problems it has dealt with over the past five years have arisen from the same piece of legislation.

Much of that time – too much for many members – has been spent resolving the costs war and, as a result, the CJC has now produced a major report setting out its blueprint for reforming the funding of litigation, ensuring costs are proportionate and, overall, improving access to justice. It was produced by Senior Costs Judge Peter Hurst; former Law Society President Michael Napier; Professor John Peysner, the leading academic in this area and a *Litigation Funding* columnist; and CJC chief executive Robert Musgrove. The former chairman of the CJC, Lord Phillips, who succeeded Lord Woolf as Lord Chief Justice this month, is backing the conclusions.

Lord Phillips: backing reform blueprint

The CJC has already successfully established the predictable costs scheme in road traffic accident (RTA) cases under £10,000, and agreed fixed success fees in RTA, work accident and industrial disease cases.

It now wants to introduce a framework to ensure proportionality and predictability in all personal injury (PI) cases in the fast-track – a move it describes as a 'logical extension' of its work to date. The report recommends that the underlying principle of conditional fee agreements (CFAs) – that the many pay for the few – would be aided by increasing the upper limit of the fast-track for all cases from £15,000 to £25,000. It suggests this could go yet further by including an opt-in facility for cases worth up to £50,000.

At the same time, it opposes the Better Regulation Task Force's recommendation last year that the small-claims limit for PI cases could be raised from £1,000 to £5,000. It also says the threshold for housing cases should remain at £1,000.

In the new fast-track for PI, there would be fixed costs from the pre-action protocol stage through the post-issue process and including trial, with an escape route for exceptional cases. Fixed success fees, fixed/guideline after-the-event insurance premiums, and fixed/guideline disbursements would also be part of the scheme.

The CJC maintains that more work is needed to improve the handling of low-value (under £10,000) RTA cases where liability is not an issue. 'Speedy and prompt resolution would be assisted by a less resource-intensive pre-action protocol that would reduce unnecessary transactional costs,' it says. This should include:

- The presumption that the claimant's lawyer will obtain a medical report from an appropriate medical practitioner at a fixed fee, to be paid promptly by the third-party insurer;
- The development of a 'tariff' database for the valuation of general damages;
- The agreement of a national standardised format, fixed-fee and target timescale for delivery of police reports; and
- A priority objective that all professionals involved in the claim should have regard to rehabilitation of the injured claimant.

As for the multi-track, the CJC acknowledges that attempts by the courts to control costs by means of case management directions, the use of estimates, costs-capping and budgeting have met with mixed success. 'These measures are not used consistently and there is much confusion about what each term means in practice and about the relationship between the various devices to control costs,' it says.

For all their stuttering use, the CJC sees estimates with stronger sanctions for failure to adhere as the way forward in cases worth less than £1 million. Such a failure should give rise to a presumption of disproportionality, the report says. This would mean that on assessment, any steps taken that were not necessary and reasonable would not have to be paid. Estimates would need to be given on at least two occasions – first at allocation and then at a case management conference or, if there is no conference, at the pre-trial questionnaire stage. At allocation, the master/district judge should decide whether an estimate is acceptable, and the point at which the next estimate is required. Parties would be able apply to vary the estimate.

The CJC consulted last year on costs budgeting and has decided that unless the court orders otherwise, in non-PI fast-track and multi-track cases worth less than £1 million, costs-capping and budgeting should not apply. However, the report calls for a rebuttable presumption in favour of capping and budgeting in group actions worth more than £1 million and other proceedings where the court so orders, such as family provision cases and defamation. The judge assigned to manage the case would set a budget from the first case management conference and sit with a costs judge as assessor. Alternatively, the costs judge could be directed to decide on the appropriate figures.

The report emphasises that budgets and caps are appropriate as a means of control and proportionality in the £1 million-plus cases where costs are likely to be significant. It continues: 'Budgets, which should apply to both parties to an action, could be agreed by stages as the proceedings progress or imposed by the court if no agreement is possible, with liberty to the parties to apply should there be a change in the circumstances on which the budget was based. The budget should set a cap for each step of the litigation and thus the budget may develop as the action proceeds.'

If, as a result of seeing budgets, the court sets an overall cap on costs, it emphasises that this is just a maximum – the paying party could still argue that it should pay less. But where there is just a budget, there should be no need for a detailed assessment.

The CJC has also revisited the question of benchmark costs for proceedings having a limited and fairly constant procedure, which were raised by Lord Woolf in his *Access to Justice* report but put on hold during the costs war. The CJC says pre-proceedings work done in accordance with protocols falls into this category. 'Since both parties have to comply with pre-action protocols and the steps taken are set out in the protocols, it should be possible to calculate appropriate benchmark figures for the various stages of this work,' it concludes.

When it comes to funding, the CJC is clearly concerned that CFAs are not delivering on the aim of providing access to justice for middle-income earners who are not eligible for legal aid. 'The essential ingredient of an after-the-event insurance policy to support a CFA at an affordable premium is a limitation on putting an affordable funding package in place and, in the absence of the lawyer paying the premium, many people simply cannot afford this,' it finds.

Therefore, it says, it is time to reconsider contingency legal support funds that could operate as an alternative option without additional costs to the government. It says the schemes put forward in the past should be revisited, but points in particular to the Supplementary Legal Aid Scheme (SLAS) that operates in Hong Kong.

The SLAS has higher eligibility levels than the regular legal aid scheme and a claw-back of damages – 6% if the case settles, 12% if it goes to trial. If the defendant wins, the fund pays his costs. The majority of good cases can obtain funding through the SLAS – a contribution and application fee are used to weed out frivolous claims. Currently, decisions are made by Legal Aid Board staff who are said to be constantly worried that a case may be lost and wipe out part of the budget, although in fact the CJC found the SLAS to be working 'pretty well'.

The aspect of the report that may well draw the most attention is the proposal to allow contingency fees, particularly to assist access to justice in group actions and other complex cases where no other method of funding is available.

However, the CJC rejects US-style contingency fees because they would require abolition of the fee-shifting rule, with the likely consequences that payments-in would lose their impact and the incentive to settle would be reduced. Instead, it says regulated contingency fees along similar lines to those permitted in the Canadian state of Ontario – where recoverability remains – should be considered. The controls on such agreements are:

- All contingency fee agreements must be in writing;
- They are prohibited in criminal, quasi-criminal and family law matters;
- Lawyers are precluded from collecting both the pre-determined contingency fee and legal costs unless approved by a judge;
- The client may collect full payment for an award of costs even if it exceeds the amount payable under a contingency fee agreement if the award is used to pay the client's solicitor;
- The minister is able to prescribe a maximum percentage that can be charged as a contingency fee; and
- The court may review contingency fee contracts and endorse negotiated fees above the prescribed standard where it is fair to do so.

On other funding matters, the report recommends that protective costs orders and third-party funding be investigated further following the Court of Appeal's recent *Corner House* and *Arkin* decisions respectively. It also says further expansion and public awareness of before-the-event insurance should be encouraged.

So what of the future of costs law and policy? 'The time has come to establish a specialist body – a costs council – to oversee the introduction, implementation, monitoring and review of the new costs framework regime that we recommend,' the report says. Its roles would include reviewing annually the recoverable fixed fees in the fast-track and also the approach the CJC has devised to allow the indemnity principle to 'quietly go to sleep'.

Through the CJC, solicitors and other parties from across the litigation industry have been unanimous in calling for an end to the principle; however, there are differing views as to how it could be done, and it appears that primary legislation – if needed – is unlikely to be forthcoming. Thus, the report says that to remove the risk of technical challenges and satellite litigation, the costs council would determine between-the-parties rates, not dependent on rates agreed between solicitor and client. Elsewhere, the report backs the regulation of claims management companies, a simple flat rate (or fixed fee in a scale scheme) for litigants in person, and moves to introduce a pro bono CFA, under which the successful litigant who is assisted pro bono should, in the normal way, be entitled to recover costs, paid to a pro bono charitable organisation or fund. The challenge now for the CJC is to have these recommendations accepted by the government. Some, such as the fast-track, seem likely to find more favour than others, such as contingency fees, for which the government has shown little enthusiasm. But one thing, at least, is sure: costs and funding are set to figure large on the legal landscape for some time yet.

On the fast track to disagreement?

Extract from Litigation Funding December 2005
By Jon Robins

Costs commentators were taken by surprise at the publication of the Civil Justice Council's (CJC) 'somewhat unexpected' (as the Association of Personal Injury Lawyers (APIL) put it) report (see [2005] *Litigation Funding*, October, 6). It appeared that the well-respected body that had carefully tiptoed around the interests of the diametrically-opposed claimant and defendant camps had suddenly developed some pretty radical views of its own – such as its endorsement of contingency fees as a funding method of last resort.

'APIL has always been against the introduction of contingency fees for personal injury cases as we feel the claimant's damages should be sacrosanct,' responded chief executive Denise Kitchener. She was also conscious that the CJC chose to deliver its report in the midst of a debate on the so-called compensation culture and on the eve of a brand new conditional fee agreement (CFA) regime. 'We are now at a stage where we have a workable system and introducing contingency fees now would render the last five years' work pointless,' she reflected.

Certainly, the timing of its publication raised eyebrows from all quarters. It was 'baffling that, at the very moment consensus has been reached, and we have turned the corner on CFAs, and the satellite litigation that went with it' that a whole new debate opened up again, reflected Rob Carter, head of the Forum of Insurance Lawyers' (FOIL) costs special interest group.

The CJC now appears satisfied that it is time to extend the limit on the fast track from £15,000 to £25,000. However it came out against the previous proposal of the Better Regulation Task Force to raise the small-claims limit from £1,000 to £5,000. It proposes that in the new fast-track for personal injury claims there should be fixed costs from pre-action stage onwards, with an escape route for the exceptional cases. For road traffic accident claims below £10,000, the CJC recommends the development of a 'tariff' database for general damages. On the multi-track, it favours estimates with stronger sanctions for failure to adhere as the way forward in cases worth less than £1 million. The CJC is not convinced of the ability of CFAs to deliver access to justice, and therefore puts its weight behind a contingency legal support fund, as well as the possibility of introducing contingency fees.

APIL is 'profoundly disappointed' that it was not consulted prior to publication. 'The role of the CJC is to facilitate discussion between parties, and they do that very well,' comments Richard Langton, the group's vice-president. 'They have a neutrality and respect which means that people come to the conferences they organise and, by coming to those conferences, deals are struck, misunderstandings eradicated and communication takes place. It is all very healthy.' Apparently, the CJC's purpose is not to come up with its own ideas without the participation of the special interest groups.

So what is the role of the CJC? It is very simple 'because it is laid down in statute in the Access to Justice Act [1999], which is to monitor and make there commendations for reform of the civil justice system', says the CJC chief executive Bob Musgrove. What about the timing of the report? He calls it 'the logical culmination of a lot of work' and says it 'was not timed to be disruptive to anything that the government is doing'. He says: 'The whole point of simplified CFAs and passing regulation to the Law Society was the Master of the Rolls' handiwork flowing from a CJC conference. We have reflected stakeholders' views that in high-volume personal injury litigation, they do not want to disrupt CFAs, and they believe that there is a sustainable funding market for the future.'

David Marshall, managing partner at south London firm Anthony Gold and past APIL president, was also troubled by the report insofar as the recommendations do not seem to flow from the experiences gathered on the round-the-world trip made by CJC members.

'The conclusion they seem to come up with is that no one has a perfect system, everyone has problems in different ways, and everyone is looking elsewhere to find answers,' he says. 'The recommendations seem to be driven by, perhaps, a different agenda.'

Kerry Underwood, a leading costs commentator and senior partner at Hemel Hempstead firm Underwoods, 'totally and utterly' disagrees with any suggestion that the CJC should simply be some kind of impartial conduit between stakeholders in the cost debate. He welcomes a bit of radical thinking. 'I think whether one agrees or not with their recommendations, and I largely agree, they have done a public service by putting these ideas out there in the public domain rather than keeping the debate in dinosaur-land,' he says. 'Personally, I'm not interested in the horse-trading that is going on between claimants' and defendants' solicitors.'

Another attendee of CJC meetings points out that APIL, far from not being consulted by the council, has been at every CJC meeting for the past five years. 'How much more ''consulted'' do they want to be?' he asks.

Clearly, there is much that claimant personal injury lawyers will object to in a document that one defendant lawyer happily likens to 'Norwich Union's charter' (referring to the insurers' vision of the future published in May 2004 in its report *A modern compensation system*). APIL sees no justification for what it calls an 'arbitrary' increase in the fast-track limit to £25,000.' You could have a £20,000 car written-off in an accident, and that qualifies it is a multi-track case, whereas if it is a £3,000 banger it is the small claims court. The issue is not value but complexity.'

Unsurprisingly, FOIL regards the proposal as eminently sensible. 'I never thought there was much logic in a £15,000 cap,' says Claire McKinney, a past FOIL president and partner at Davies Lavery. 'It is just a question of ''pick a figure''.' She welcomes the idea of extending predictable costs in RTA cases under £10,000 to all fast-track cases. 'What insurers are interested in is having predictable costs so that they can properly underwrite claims and properly assess what premiums should be,' she says. If all fast-track cases were dealt with on that basis, she says, it would be 'music to our ears'.

She adds: 'APIL wants to hang on to hourly rates and doing the things that they have always done – well, wouldn't we all? But in the defendant camp we have had to be commercial for a long, long time. I am sure there are FOIL members who are working on fixed fees on claims up to the value of £25,000 already because the market demands it.' The lawyer suggests her insurer clients will not be quite so happy about the CJC 'missing an opportunity' to raise the threshold on personal injury claims in the small claims court from £1,000 to £5,000. But she argues that the CJC is probably correct. Otherwise 'you would be precluding access to justice for an awful lot of people' because they would not be able to recover legal costs in the small claims jurisdiction.

Kerry Underwood would have liked the CJC to have gone even further in its proposals for the fast-track. 'The courts have got the discretion to take a case out and multi-track it,' he says. 'I would make the big jump to £50,000 and with fixed costs in all cases up to £50,000.' He is also supportive of the introduction of contingency fees as a 'last resort' funding mechanism – but not with the proposed model. The CJC opted for a regulated Ontario-style version of 'no win, no fee' as opposed to the free-for-all US-style deals. As he points out, the difference between a regulated contingency fee in the Canadian fashion and our own conditional fee is hardly going to be great. 'It seems to me that the model for the future is to have a recoverable contingency fee but with a ''floor level'' of basic costs,' he argues. 'The problem with straight contingency fees is that it is not worth doing low-value cases.' The value of the CJC report is raising such issues, Mr Underwood points out. Otherwise, he reckons, the endless rehearsing of old arguments between the various interest groups smacks of 'Nero fiddling as Rome burns'.

Jon Robins is a freelance journalist

Priorities for 2006

The Civil Justice Council has been at the forefront of many of the developments in the area of the costs of civil proceedings. In 2006, the Council will host a forum to discuss the recommendations put forward in its awaited paper: ''Improved Access to Justice – Proportionate Costs and Funding Options''. Representatives from across the legal landscape will be invited to discuss the ideas contained in the paper and put forward solutions to the Department for Constitutional Affairs.

The Council plans to continue its ground breaking mediations in the areas of Defamation, Public Liability, ATE premiums and Medical Reports in road traffic accident cases under £10,000.

The Housing and Land Committee has finished a consultation on its proposed Rent Arrears protocol. Further work will be completed on incorporating the results of the consultation into the protocol in the spring and it is hoped that it will be approved by the Rule Committee in 2006.

The Council will continue to develop a successful working relationship with the Legal Services Commission, informing Lord Carter's review of Legal Aid, and will look at how the Council can work in partnership with legal services providers to make recommendations for the development of effective public funding mechanisms.

A new committee will be formed by the Civil Justice Council to focus on international matters. The Comparative Law Committee will be chaired by His Honour Judge Graham Jones and will engage proactively with other jurisdictions.

Finally the Civil Justice Council has announced a working group to review Pre-Action Protocols. It is anticipated that the findings of this working group will be presented to Government in late 2006, and debated with stakeholders at a forum in 2007.

The Civil Justice Council Members

Sir Anthony Clarke
was appointed Master of the Rolls and Head of Civil Justice on 1 October 2005. He was called to the Bar (Middle Temple) in 1965 where he was the Pupil of Barry Sheen. In 1979 he became a QC and then a Recorder sitting in both criminal and civil courts. Sir Anthony was appointed to the High Court Bench in 1993 and in April that year succeeded Mr. Justice Sheen as the Admiralty Judge. He sat in the Commercial Court and the Crown Court trying commercial and criminal cases respectively. Appointed the Court of Appeal in 1998 he was called upon to conduct first the Thames Safety Inquiry and in the following year the Marchioness and Bowbelle Inquiries.

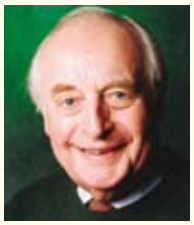
Lord Justice Dyson
was appointed Deputy Head of Civil Justice in September 2003.
He was called to the Bar in 1968 and appointed Queen's Counsel in 1982. He became a High Court Judge of the Queen's Bench Division in 1993, was a member of the Judicial Studies Board (1994-1998) and judge in charge of the Technology and Construction Court (1998-2000). He has been a Lord Justice of Appeal since 2001.

Lord Justice Keene
is a judge of the Court of Appeal of England and Wales. He has held this position since 2000, having been a High Court judge since 1994. He was educated at Hampton Grammar School and Balliol College, Oxford where he obtained a First in Law. He then spent nearly 30 years as a barrister, specialising in town planning inquiries and judicial review. He is Chairman of the Judicial Studies Board, which is responsible for training judges throughout England and Wales. He was for some years the Visitor to Brunel University and holds an Hon. LL.D awarded by Brunel.

Mr Justice Bean
was appointed a High Court judge in July 2004 and assigned to the Queen's Bench Division. He was in practice at the Bar from 1976 to 2004 and was Chairman of the Bar in 2002. He worked on the original Access to Justice proposals as a member of Lord Woolf's Fast Track Working Group.

Suzanne Burn
is a District Judge at Bromley County Court. Previously she was a senior litigation solicitor, acquired an LLM in advanced litigation, and from 1994-1999 was Secretary to the Law Society's Civil Litigation Committee, leading the Society's work on the Woolf reforms & the CPR. From 1999-2005 she had a ''portfolio'' of roles, including lecturing and training on civil procedure to lawyers and expert witnesses. She writes widely on civil litigation including for the White Book, Litigation Practice and Legal Action. Her book on Successful Use of Expert Witnesses was published in September and she is editing the 2nd edition of the Law Society's Civil Litigation Handbook. Suzanne has been a member of the Civil Justice Council since 2001 and has recently taken over as chair of the Serious Injury and Clinical Negligence Committee.

Mr Justice Stanley Burnton
was educated at Hackney Downs Grammar School and St Edmund's Hall Oxford, where he read Jurisprudence. He graduated in 1964 and was called to the Bar in 1965. He practised as a commercial lawyer, took silk in 1982, was a recorder and sat as a deputy High Court judge in the Chancery Division from 1994. He was appointed to the High Court bench in July 2000. He was nominated to the Administrative Court shortly afterwards, and most of his judicial work is now in that Court.



Vicki Chapman
is a solicitor and Head of Law Reform and Legal Policy at the Law Society, and a member of the Civil Justice Council since March 1998. Formerly Policy Director of the Legal Action Group. She was a policy officer at the National Association of Citizens Advice Bureaux 1994-1996, and a solicitor at the Child Poverty Action Group 1988-1992, in charge of CPAG's test case strategy.

David Greene
is a solicitor. He qualified in 1980. He was a member of the Civil Procedure Rule Committee between 1997 and 2002. He then joined the Civil Justice Council in 2002. He is Chair of the Housing & Land Committee of the Civil Justice Council. He is on the Housing Dispute Resolution Working Group established by DAC. He is on the editorial board of the Green Book ('Civil Court Practice' Butterworths), author of titles in the Atkins Court Forms series, contributor to Civil Litigation Handbook (Law Society), author of 'The Civil Procedure Rules' (Butterworths).

Graham Jones
is a Designated Civil Judge for South and West Wales. He was educated at Porth County Grammar School and St John's College Cambridge. He was admitted as a solicitor in 1961 and was in private practice, Cardiff, civil litigation and advocacy until 1985. He was President of Associated Law Societies of Wales from 1982-1984. Graham was a member of the Lord Chancellor's Legal Aid Advisory Committee. He was appointed Deputy Circuit Judge in 1975, Recorder 1978 and Circuit Judge (assigned to Wales and Chester Circuit) 1985. Resident and Designated Judge Cardiff County Court 1994-1998; Designated Civil Judge Cardiff 1998-2000, South and West Wales 2000-; authorised since 1993 to hear TCC cases and Mercantile cases since 2000 and to sit as Judge of High Court Senior Circuit Judge since 2002.

Vicky Ling
has over twenty years experience in the advice sector as an adviser, manager and currently as a management committee member of Lewisham Citizens Advice Bureaux Service. Vicky was amongst the first staff appointed by the then Legal Aid Board to implement its Quality Assurance Standard. Since 1995 she has worked as a consultant on different aspects of quality management and LSC contract requirements with voluntary organisations (including Citizens Advice) and over 60 firms of solicitors.

Nicola Mackintosh
is a partner at Mackintosh Duncan solicitors, established in 1999; she is a member of the Law Society's Mental Health and Disability Committee. She has been involved in many of the test cases in the field of public law, community care/health law and incapacity law. She is regularly involved in 'best interests' cases concerning vulnerable adults and cases concerning access to health and community care services for disabled people and their carers, including hospital and care home closures. She was Legal Aid Lawyer of the Year (Social Welfare Law) 2003.

Nic Madge
Circuit Judge sitting at Harrow Crown Court. Formerly District Judge, sitting at West London County Court, and partner with Bindman and Partners, solicitors, heading their Housing Department. Member of Senior Editorial Board of Civil Procedure (The White Book), he writes regularly on law and procedure. He was a member of Joint Working Party of the Bar and Law Society on Civil Procedure (Heilbron/Hodge) and of Lord Woolf's Housing Working Party. He is a member of the Judicial Studies Board tutor team and has been a member of the Civil Justice Housing and Land Committee since 2001.

Frances McCarthy
is a partner with Pattinson and Brewer where she is the head of the personal injury department. She is a former president of the Association of Personal Injury Lawyers. She is a member of Lord Woolf's working party which developed the personal injury pre-action protocols. She was co-chair of the International Practice section of the Association of Trial Lawyers of America and was on the initial executive committee of the Environmental Law Foundation. She is on the Editorial Board of the Journal of Personal Injury Law and is the co-author of Know-how for Personal Injury Lawyers and contributes to Jordan's 'Civil Court Service'.

Michael Napier CBE
is a solicitor and senior partner of national law firm Irwin Mitchell. In 2000 he was President of the Law Society and is currently the Attorney General's envoy for the national co-ordination of pro bono work. As a practitioner, after several years as an advocate in crime, mental health, employment and human rights law he has specialised in personal injury law and is a former president of APIL. He has been closely involved in the civil justice reforms particularly conditional fees and the access to justice legislation. He is an accredited mediator.

Martin Partington CBE
completed his term of office as Law Commissioner at the end of 2005. He has been retained as Special Consultant to the Law Commission to further its major programme of work on the reform of Housing Law. He has also been asked to act as research adviser to Sir Robert Carnwath, Senior President (designate) of the new Tribunals Service. The third edition of his 'Introduction to the English Legal System' is published by OUP in April 2006.

Professor John Peysner
is a Solicitor and Professor of Civil Justice at Nottingham Law School. He has edited 'The Litigator' and was founding Course Leader of the LLM in Advanced Litigation.
He has seventeen years experience in litigation practice, including Law Centres, Legal Aid and latterly, defendant Medical Negligence. He has conducted research on case management, costs, civil procedural systems, consumer attitudes to solicitor's services and testing in house against contracted legal services.
He was a member of the Lord Chancellor's Committee on Claims Assessors (The Blackwell Committee) and is editor of the Law Society's 'Civil Litigation Handbook'.

Monty Trent
has been a District Judge since 1992. He practised as a sole practitioner and later in partnership as a senior partner in Barnett Alexander Chart, specialising in construction and family law. He has a keen interest in IT and has been closely involved in training and supporting judges in the use of Information technology.
He is a founder member of the CJC and now sits on its Executive Committee.

Laura Wilkin
is a Partner with Weightmans where she heads the Knowhow and Best Practice Division. She has 15 years experience in defendant litigation practice and is Lobby Officer for FOIL, the Federation of Insurance Lawyers.
Laura has recently been appointed to the Courts Board and was formerly a member of the Editorial Board of the Journal of Personal Injury Litigation.

Karl King
is a Barrister practicing from Hardwicke Chambers where he is head of Housing. He is Vice-Chairman of the Bar Councils Race and Religion Committee. He is a past member of the Bars Professional Conduct and Complaints Committee, is chair of the South Eastern Circuit Minorities Committee and has been appointed as a Recorder.

Graham Gibson
is the Director of Claims at Groupama Insurances who are a French mutual insurer with their roots based in the farming community. Graham joined the Group in 1995 as Head Office Claims Controller dealing with major and complex losses. He has since held a number of senior claims management positions and, in 2004, was appointed to the position of Director of Claims. His key responsibilities include the technical integrity and service delivery within the Groups' claims centres. Graham has participated in a number of market initiatives and is currently a member of the ABI Strategic Claims Committee. In addition he has already served on Civil Justice Council Sub Committees particularly in the area of costs.

Janet Tilley
is a Solicitor and Joint Managing Partner of Colemans-ctts Solicitors specialising in Claimant Personal Injury Law with particular expertise in Road Traffic Accident Claims. She is a former Chairman of the Motor Accident Solicitors Society (MASS) and chaired the MASS RTA Protocol Committee for a number of years. She is a current member of the Bodily Injury Claims Managers Association (BICMA) with a particular interest in Rehabilitation and Chairman of the Civil Justice Councils Rehabilitation Rules Group.

The Secretariat

Robert Musgrove
is Chief Executive of the Civil Justice Council. He has worked in the administration of the civil justice system for nearly twenty years and has practical experience of the operation, planning and financing of the court system. He has been Head of Project Management for the Access to Justice Reforms in the Lord Chancellor's Department, and also the Civil Justice Reform Research and Evaluation Programme Manager.

Monique Deletant
is Assistant Secretary to the Civil Justice Council. She worked for the Lord Chancellor's Department evaluating the impact of the Woolf reforms and wrote 'Emerging Findings: An early evaluation of the Civil Justice Reforms'. Prior to this she worked as a researcher for an MP.

Jaswanti Kara
joined the Civil Justice Council Secretariat in June 2003. She previously worked in Barnet and Central London County Courts. She is responsible for ensuring the compliance of the Civil Justice Council to regulations governing NDPBs. She also works with committees and the secretariat on policy and recruitment matters.

Tiem Nguyen
has been Executive Assistant to the Civil Justice Council since November 2004. She previously worked for the Department for Constitutional Affairs in Judicial Competition (Courts) Division. She works with the committees and is also responsible for ensuring the Civil Justice Council website is up to date.

Christine Damrell
has worked for the Civil Justice Council since July 2002. She previously worked in the Civil Appeals Office where she first started working for the Department for Constitutional Affairs. Christine provides admin support to the CJC and its committees as well as the Master of the Rolls Private Office Team. She also assists with the Council's recruitment and publicity.

Contacting the Council

"Your Voice in the Civil Justice System"

The Council is **your voice** in the civil justice debate. It needs to hear the views of anyone that uses the system to make sure that the recommendations it makes to the Department for Constitutional Affairs are the best way of modernising the system. The Council therefore wants to hear your views about the effectiveness of the reforms, whether the procedures are meeting their aims of making civil justice quicker, cheaper and fairer, or any suggestions you have for improvement or further development. Are there particular problems that you think that the Council should be addressing? How are the reforms working in practice? What are the good and bad aspects of the reforms?

Remember that although the Council welcomes and indeed encourages your general comments on using the civil courts, it cannot comment on any individual court action or dispute, the conduct of any legal practitioner, and is unable to provide procedural advice.

Contacting the Council

Write to the Secretariat, Room E214, Royal Courts of Justice, London, WC2A 2LL or email to cjc@hmcourts-service.gsi.gov.uk. You can also email direct to the Council Secretariat from the Council's website.

How can I find out more about the Council?

Information on the following matters is available on the Council's website

www.civiljusticecouncil.gov.uk

The latest issues that the Council is focussing on and current events

Summaries of Council meetings and Committee meetings

The membership of the Council and its Committees

Copies of responses to consultation papers and other documents

Copies of the Council's annual reports

The Costs Debate

If you would like to visit our website on Costs and take part in the on-going debate please visit:

www.costsdebate.civiljusticecouncil.gov.uk

The ADR website

If you would like to visit our website on ADR please visit:

www.adr.civiljusticecouncil.gov.uk