

# Civil Justice Council

## Annual Report 2007



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## Foreword

The past year has arguably been the most productive in the Civil Justice Council's history, and certainly the most diverse in terms of the breadth of subjects with which we have engaged. Whilst I am concerned that we continue to await the Government's response on the personal injury claims process, it has allowed the Council to devote time to taking stock of a number of important areas of civil justice, and to test how effective Lord Woolf's reforms have really been these nine years on.



The Council has reviewed pre-action protocols, revised guidance on alternative dispute resolution in courts, and has reconsidered the use of experts under CPR rule 35. I am happy to say that nearly a decade down the line, Lord Woolf has not been found wanting, and our proposals for further reform are in general aimed at enhancing or simplifying what we have, rather than concluding that we should create something new and better.

It gives me particular personal pleasure that the Council has achieved a draft Practice Direction to develop a far quicker and more straightforward way for paying compensation to victims of mesothelioma and other fatal asbestos-related conditions. It is a true credit to the judges who handle these tragic claims in the courts, and to the claims managers in law firms and insurance offices, that they have managed to sit down with the CJC and agree a protocol for ensuring that money is paid to the victims and their families hopefully before their illness reaches its final stage.

I am also pleased to see notable improvements in access to justice in the housing field, with the Rent Arrears Pre-Action Protocol now part of the CPR, and a draft protocol for mortgage possession claims in the process of consultation. The Law Commission too have been considering how the courts can determine housing claims more effectively, and their potentially far-reaching proposals will be discussed in early summer 2008 at an event to be held jointly with the newly formed Administrative and Tribunals Justice Council.

Europe too is gaining a far greater influence on civil procedure reform in England and Wales. This year has seen directives on debt enforcement, limitation in personal injury, and alternative dispute resolution. The Rome II agreement was signed laying down direction on choice of legal jurisdiction in non-contract cases. Finally and perhaps with the greatest potential impact on our legal system, extensive debate continues to take place surrounding forthcoming reform of multi party or collective actions in competition and consumer claims.

Legal costs and the funding of civil litigation continues to concern me, and this area is arguably the only part of the new civil procedure that has not been a success. I welcome the establishment of the Costs Advisory Committee which is a partial, but

nonetheless positive, response to the Council's recommendation, and I will follow their considerations keenly. Satellite litigation regrettably continues in the void of the further development of predictable costs, and Council has this year successfully mediated an agreement between a number of medical reporting agencies and liability insurers to resolve the litigation that was created following the *Wollard v Fowler* decision.

On a rather bleaker note, this year has seen the most unedifying spectacle of litigation between the Law Society and the Legal Services Commission over the Government's reforms of legal aid. The Civil Justice Council has offered to work with both parties to ensure a sustainable and affordable future for high quality civil legal aid services, and hopes to work with practitioners and the Commission over the next year to look at longer term proposals.

I would finally wish to pay tribute to the 120 plus experts and specialists that form the Civil Justice Council and its various committees and working groups. We have achieved more this year, than any previous year, and it is down to the commitment and altruism of each individual that we are able to provide this essential service for Government.

A handwritten signature in black ink, appearing to read 'Anthony Clarke', with a long, sweeping horizontal line extending to the right.

Sir Anthony Clarke, MH

## How the Council Works

The Civil Justice Council is a Non Departmental Public Body, sponsored by the Ministry of Justice. It was established under the Civil Procedure Act 1997 alongside 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 kinds 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 defendant's interests, an official of the Law Society, a senior civil servant representing the interests of the Ministry of Justice or Her Majesty's Court's 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 Committee and Working Group, Access to Rehabilitation Committee, and Pre-Action Protocol Committee.

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 outcomes:

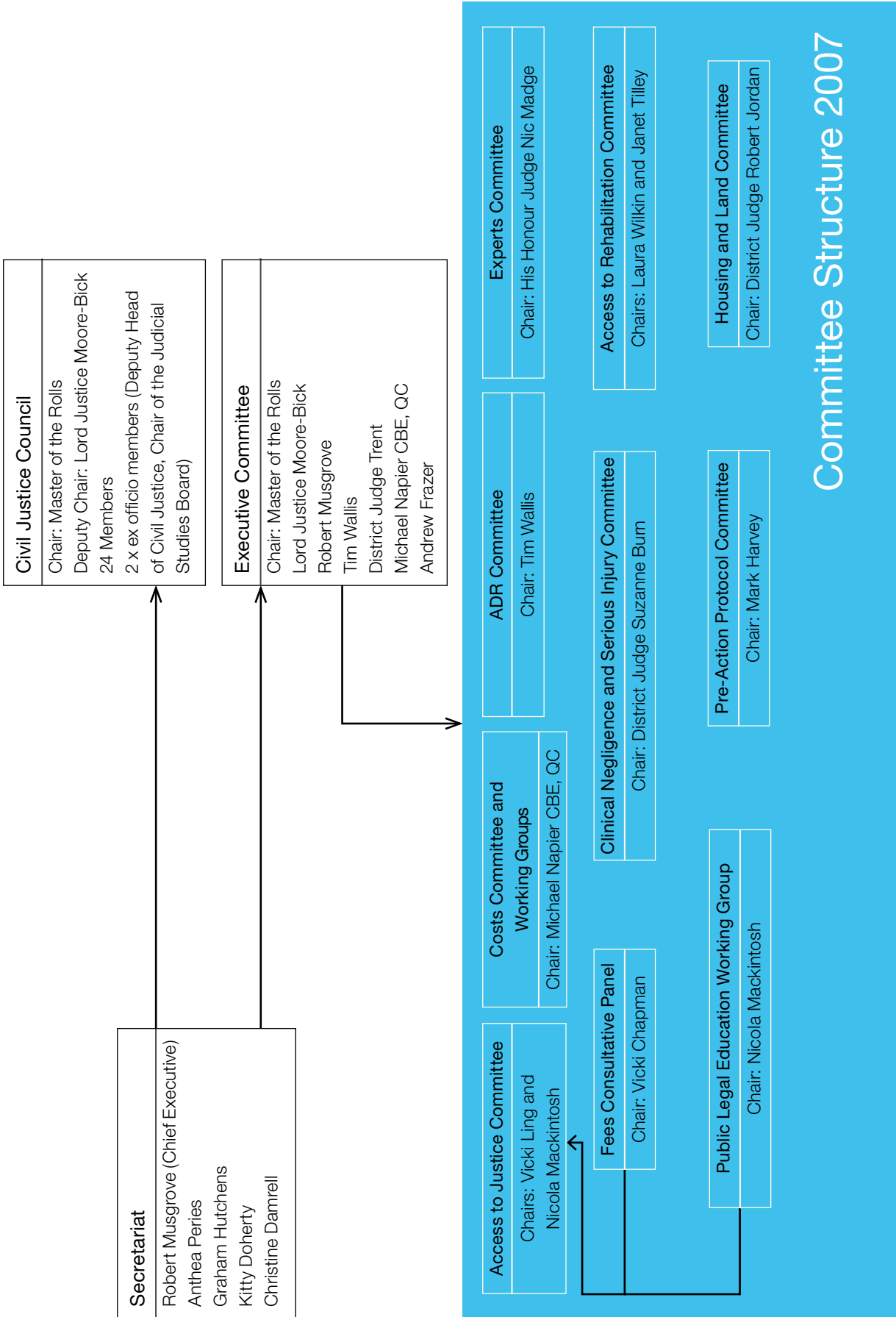
Advice to the Secretary of State on Consultation Papers issued by his department on civil justice related matters.

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





## Committee Members

Tim Wallis (Chair)

David Cooke  
Professor Hazel Genn CBE  
Harry Hodgkin  
Michel Kalipetis QC

Robert Nicholas  
Stephen Ruttle QC  
Colin Stutt

# Reports from the Civil Justice Council Committees

## 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 and 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

- 1 At a meeting jointly sponsored by the Civil Justice Council, the Ministry of Justice (MoJ), and the Civil Mediation Council (CMC) in Cobham, Surrey, in December 2007, some 40 stakeholders, including the Master of the Rolls, gathered to discuss reform proposals regarding the future of civil mediation.
  - 1.1 The areas identified for potential reform and further study included:
    - a. Preparing a “Mediation Code” which might, if adopted, have similar standing to the Rehabilitation Code.
    - b. Examining the idea of enhanced guidance (for practitioners, judges and litigants), perhaps supported by a practice direction. It was acknowledged that references in the CPR to mediation needed to be strengthened.
    - c. A review of
      - mediation awareness training for judges, lawyers and those involved with advising parties about options for dispute resolution.
      - mandatory training requirements at all levels (undergraduate, professional training and continuing professional development).
  - 1.2 The Conference resolved that the Proportionate Dispute Resolution Team of the MoJ, the CJC and the CMC work together, with important input from the ADR Committees of the Law Society and the Bar Council, in pursuing an agreed programme of activity arising from the Conference.

- 1.3 The nature of the Conference recognised that the momentum behind the increased use of mediation, for the good of society and the satisfaction of clients, continues to gather.
- 2 The Committee recommended that the Rules Committee consider amending the CPR Allocation Questionnaire so as to draw attention to the National Mediation Helpline and ask solicitors to confirm that they have discussed ADR and costs with their clients.
  - 3 Guidance concerning judicial referral to mediation and particularly the factors which make cases suitable, or unsuitable, for referral was incorporated in the latest version of the Court Mediation Service Toolkit and was circulated to judges.
  - 4 Further consideration has been given to the Council hosting (with others) a European ADR seminar in 2008/9 concerning the EU ADR Directive and associated issues.
  - 5 The Committee heard and debated:
    - MoJ sponsored research by Committee member Professor Dame Hazel Genn “Twisting arms: court referred and court linked mediation under judicial pressure” and
    - a presentation by Dr Sue Prince on mandatory mediation schemes.
  - 6 Liaison with Civil Mediation Council (CMC) continues. 41 ADR providers have demonstrated that they meet the CMC’s standards and have been duly accredited. The CMC’s work on mediation standards remains ongoing.

**Tim Wallis**  
Chair

## Committee Members

Michael Napier CBE, QC  
(Chair)

Senior Costs Judge Peter Hurst  
Richard Moorhead  
Robert Musgrove  
Colin Stutt

## Cost Committee and Working Groups

### Terms of Reference

To monitor and comment on the effectiveness of existing costs practice and procedure in the 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

Under the auspices of its aim to promote access to justice by improvements in how civil claims are funded and how to keep the costs of litigation proportionate the committee has pursued the recommendations it has made two major reports:

### August 2005 Report – Funding Options and Proportionate Costs

The CJC recommendation that the small claims limit should remain at £1000 was accepted by the Ministry of Justice in its consultation paper on streamlining the personal injuries claims process.

Disappointingly, the other CJC recommendations for personal injury and RTA claims have not been followed in the MoJ proposals, although much still depends on working out the details supported by stakeholder agreements that the CJC has been asked to mediate, an established role that has been referred to in previous annual reports.

It is pleasing to note that the CJC recommendation supporting the introduction of costs recovery in pro bono cases has now been implemented in Section 194 of the Legal Services Act. Other recommendations relating to a Contingency Legal Aid Fund, a Supplementary Legal Aid Scheme, third party funding, and the introduction of contingency fees in multi party cases were all previewed in this report and have been studied more closely in the second report:

### **June 2007 Report – Alternative Funding Structures**

Following extensive further research of funding mechanisms in other jurisdictions the CJC published its second funding and costs report. After concluding that none of the contingency style funds studied elsewhere could be replicated here, the report recommended that the Legal Services Commission should establish a Supplementary Legal Aid Scheme (SLAS), that if a SLAS did not happen then regulated contingency fees should be introduced particularly for multi party actions, and that if ATE backed CFAs were to fail then contingency fees would have to be considered for civil cases generally. The report also recommended the formalisation of the third party funding of litigation by Rules of Court to regulate this new funding trend.

### **Costs Council**

Disappointingly the CJC recommendation for a Costs Council, with a remit going beyond the review of hourly rates and as an independent body including stakeholder membership, was not accepted by the MoJ that has instead established an internal costs advisory committee which appears to have a narrow remit. The CJC and its costs committee will therefore continue to maintain responsibility for keeping access to justice policy issues under review in the area of funding and proportionality.

### **Predictable Costs**

- An academic study of the predictable costs scheme by Professor Paul Fenn which reported in March 2007 concluded that as a result of the scheme costs had reduced although there was evidence of a minority of firms issuing proceedings to escape from the scheme.
- The CJC mediation team concluded a long and difficult dispute on success fees in publication proceedings. A report from the CJC with recommendations on the possible solutions was accepted by the MoJ that published a consultation paper in August 2007
- As mentioned in the 2006 report, progress on predictable fees for medical reports depended on the outcome of *Wollard v Fowler* pending a Court of Appeal hearing in early 2007. The hearing was actually stayed for the CJC to attempt a mediated solution although an earlier external mediation had failed. A successful outcome was achieved by the CJC mediation team releasing a substantial blockage in the system, hopefully paving the way for further consensus on predictable medical report fees.

### **Myatt v Garrett**

The Court of Appeal decision in these cases continue to produce pockets of dispute but to date the CJC has not been asked to play a mediating role to alleviate the problems that have arisen.

### **Costs Forum**

The annual costs forum was held in February 2007 and mainly concentrated on the draft funding structures report published in June. Part of the draft, not included in any detail in the final report, is a major continuing work of the committee looking to improve access to justice for consumers who lack a cost-effective procedural mechanism for the positive enforcement of collective redress, typically for breaches of competition law such as price-fixing. The conundrum of whether an opt-out or opt-in regime is most suitable for the fair and efficient handling of such group actions needs to be studied closely and resolved. The third CJC report in the series will carry out this study and make recommendations on this important area of access to justice in 2008.

**Michael Napier**  
Chair

## Committee Members

Vicki Ling and  
Nicola Mackintosh (Chairs)

Carlos Dabezies  
Richard Grimes  
Hilary Lloyd

Dan Mace  
Atul Sharda  
Brian Havercroft

Vicki Chapman  
(Chair of Fees Consultative Panel)

## 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

During 2007 the Council continued to engage with the debate on the future of Civil Legal Aid, which followed Lord Carter's report on reforming the Legal Aid system. The Council was pleased that the Legal Services Commission listened to comments made in response to its many consultation papers and decided to delay some of the proposed implementation dates.

However, the Access to Justice Committee continues to have concerns about the reforms, in particular the impact of fixed/graduated fees on the quality of advice and representation.

The Council is concerned that before changes to the civil legal aid system are progressed any further, firm evidence is required that a move to fixed or graduated fees, or Best Value Tendering will result in an improved service to clients in need of advice and representation.

The Council remains committed to facilitating discussions between the Ministry of Justice, the LSC and practitioner groups to develop a sustainable legal aid system which increases access to justice and retains and improves quality.

## **Court Fees**

The Civil Justice Council has continued to argue that the system of exemption and remission of court fees did not adequately protect access to justice. The Council worked with the Ministry of Justice to examine the current system and in June 2007 responded to the Ministry of Justice consultation on civil court fees.

The Council remains very concerned about the high level of fees, driven by the policy of full cost recovery. Fees should not be set at a level which might prevent access to justice and should be proportionate.

The Council agreed that the proposals put forward by the Ministry of Justice for a revised system for exemption and remissions provided a fairer, more transparent and more workable structure for determining fee concessions. The Council had previously argued for a sliding scale for remission with an income taper which would ensure a more open and transparent system for remission, and that those who could not afford the full fee had part of the fee remitted. We were therefore very pleased that the Ministry of Justice proposals reflected the Council's proposed approach.

**Vicky Ling**  
Co-Chair



## Committee Members

His Honour Judge Nic Madge  
(Chair)

Henry Bermingham  
Michael Cohen  
John Cowan  
Richard Fairclough  
Mark Harvey

Alan Kershaw  
Simon Morgans  
Robin Oppenheim QC  
John Stacey

## 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 role 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

During 2007, the Experts' Committee has principally devoted its energies towards work on the Ministry of Justice and Civil Procedure Rules Committee review of CPR Part 35, its Practice Direction and the Protocol for the Instruction of Experts to give evidence in civil claims. Before discussing these provisions, and submitting our proposals, we carried out a consultation exercise. In June 2007, we wrote, with a series of questions to the following bodies, namely APIL, FOIL, CDF, The Association of District Judges, Council of Circuit Judges, the Law Society, the Bar Council, Medical Defence Union, MASS, Expert Witness Institute, the Academy of Experts, CRFP, Commercial Bar Association, Association for Victims of Medical Accidents, London Solicitors' Litigation Association, CLAN, Association of British Insurers, Local Government Association, Personal Injury Bar Association, the National Health Service Litigation Authority, Medical Defence Union and the BMA.

Our conclusions, having regard to the responses received, are that CPR 35, the Practice Direction and the Protocol are generally working satisfactorily. No one advocated fundamental reform. The main problem expressed by consultees is non-compliance with the existing Rules, PD and Protocol and orders made by judges.

After detailed discussion, we have made a number of recommendations

### 1, Definition of expert

Although there is no compelling need for an amendment to CPR 35.2 (the definition of "expert"), the Rules Committee may wish to consider whether there should be a minor amendment to harmonise the definition with that of the Criminal Procedure Rules.

## **2, Single joint experts**

There is more inconsistency than is desirable between different judges and different courts. As proposed following our consultation exercise in 2005, we consider that PD35, para 6 should be amended by inserting a number of non-exhaustive considerations that courts should take into account when deciding whether to give permission for the evidence of single or separate experts. The suggested amendment is based on existing practice and case law and does not seek to modify established practice.

## **3, Agenda for experts' meetings**

The experience of members of the committee and responses to the consultation process indicate that there are problems in agreeing agenda in clinical negligence cases. We consider that PD 35 should be amended by inserting steps to be taken by solicitors and experts which will lead to more effective agenda being agreed in more cases. The new paragraphs are modelled on directions proposed by Masters Yoxall and Ungley, who both have considerable experience in clinical negligence cases. Their suggested directions are the result of discussions which they have had with a High Court user's group.

## **4, Questions to experts**

A minority of consultees suggested that questions to experts should go beyond clarification, and be a preparation for cross-examination. A majority of the Experts' Committee rejected this approach, but the committee agreed that this is a matter of principle which the Rules Committee might wish to consider. In any event the committee agreed that PD35 para 5 should be amended to provide that questions to experts should only relate to issues identified in pleadings and should not be used to attack the integrity of experts. Further, the PD should specifically make reference to the risk of costs if questions asked are disproportionate.

## **5, Enforcement following non-compliance with Rules, Orders etc**

There was general agreement among consultees and the Experts' Committee that there is nothing wrong with the enforcement provisions and that if they are complied with, the bulk of problems will disappear. However we recommend that PD 35 should be amended to provide that experts' reports should have a mandatory statement that the writer is aware of CPR35, PD35 and the Protocol and has complied with them.

**Nic Madge HHJ**  
Chair

## Committee Members

District Judge Robert Jordan  
(Chair)

Vicki Bailey  
Helen Carr  
David Carter  
John Gallagher  
Karl King

HHJ Nic Madge  
Derek McConnell  
David Watkinson  
Mike Wrangmore  
DJ 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 bulk of this year's work has been taken up with responding to consultation papers. The papers to which the committee have responded are;

Law Commission consultation paper No 180  
Housing: Proportionate Dispute Resolution – the Role of Tribunals

Law Commission paper No 181

Encouraging Responsible Letting

Communities and Local Government Consultation Paper

The Tolerated Trespassers-consultation paper

The Committee has drafted the Mortgage Pre-Action Protocol which has been approved by the Council and is now being taken out to consultation.

The Committee has raised concerns with regard to the information available to defendants under PCOL and has asked HMCS to review how PCOL can be improved to provide local information as to solicitors and advice agencies as well as duty solicitor schemes.

In addition the Committee has been reviewing the operation of the Rent Pre-Action Protocol, looking at District Judge training for housing cases and noting the improvements, and meeting with the Legal Services Commission to discuss the funding of housing duty solicitor schemes.

The Committee will continue to monitor the operation of the Rent Pre-Action Protocol. It will also oversee the consultation on the Mortgage Pre-Action Protocol with a view to its adoption.

The Committee is also considering best practice in listing possession cases and has asked HMCS to undertake a review of listing arrangements nationally.

The Committee will also continue to monitor PCOL and Judicial training.

**Robert Jordan DJ**  
**Chair**

## Committee Members

Laura Wilkin and  
Janet Tilley  
(Chairs)

Mark Baylis  
Lord David Hunt  
Valerie Jones  
David Marshall  
Claire McKinney  
Anna Rowland

Janet Tilley  
Professor Lynne  
Turner-Stokes  
Ashton West  
Laura Wilkin

## Access to Rehabilitation Committee

### 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

### Committee Update:

During the course of the year the Rehabilitation committees, Policy and Rules, have consolidated into one Committee renamed “The Access to Rehabilitation Committee”. The re-formed group’s first task was to undertake a strategic review to reassess and redefine where the CJC Rehabilitation Group could have the most impact in further developing awareness and early access to rehabilitation services within the civil justice system.

### Strategic Direction:

An outline strategy document was produced in December 2007 which reaffirmed the groups overriding objectives to raise awareness, positively influence party behaviours and to continue to develop early access routes to rehabilitation within the civil justice system in either a supporting role to government or other bodies or in a lead role in targeted initiatives.

**Stakeholder Event:**

On 21 February 2008 the CJC Access to Rehabilitation Group held a forum attended by interested stakeholders to debate the future direction of rehabilitation in civil claims. The focus of the event was to examine where the CJC could add unique value and make a difference in both the perception and delivery of claims-related rehabilitation services. The Forum unanimously validated the desirability of the CJC retaining both supportive and leadership roles in claims-related rehabilitation, particularly where there is a need in moderate to low value injuries for early access to treatment. The forum also recognised the value of the CJC keeping and strengthening ongoing dialogue with other stakeholders to improve communication and encourage co-ordination of activity, particularly as the rehabilitation market continues to develop.

**Future Direction:**

The event on the 21 February has provided the Access to Rehabilitation Group with a wealth of material to consider and refine into valuable initiatives for approval by the Council in the coming year. The committee is particularly looking forward to working more closely with key stakeholders in continuing to develop an effective framework for delivery of rehabilitation services.

**Janet Tilley**  
Chair

## Committee Members

Mark Harvey  
(Chair)

Marise Gellert  
Martin Heskins  
Robert Jordan DJ  
Paul Kirtley  
Tony North DJ  
Pat Reed

## Pre-Action Protocol Working Group

### Terms of Reference

To consider whether the format and content of the pre-action protocols is presented in, so far as appropriate, a uniform way

To look at ways in which the costs associated with complying with PAPs can be reduced

To consider whether changes are necessary and can be made to simplify the protocols

To consider whether there are areas that would benefit from a protocol

To look at the content of individual protocols where necessary and to make proposals for change for consultation with a wider group of stakeholders

In 2007 the Civil Justice Council became the principle advisor to the Master of the Rolls on the future development of the Pre-Action Protocol regime. This included scrutinising the present Protocols but also for considering any proposals from stakeholders for additions or amendments to the Pre-Action Protocols.

During the course of 2007 the group produced and issued for consultation a draft Consolidated Protocol. This followed the Council's preference that it was desirable to reduce the number of subject-specific protocols that presently exist and to consolidate them into one overall protocol with subject-specific appendices. The responses to the consultation indicated a lack of willingness of the relevant stakeholders to proceed with a Consolidated Protocol, whilst at the same time they acknowledged that most if not all of the existing protocols could be revisited, modernised and in many cases streamlined.

Consequently on the direction of the Council, the working group proceeded to produce drafts of a new "General" Protocol and an amended Practice Direction on Protocols.

The purpose of the General Protocol is twofold. Firstly, it is designed to be used in all areas of litigation in which there is not an existing subject-specific protocol. It is noted for example that much of the work on the Chancery Division is not covered by any of the existing protocols. Secondly to aid those who seek to draft new subject-specific protocols by requiring them to base their draft upon the General Protocol.



The new Practice Directions on Protocols (together with the draft General Protocol) has been drafted with language believed to be suitable to reflect the large number of cases where a litigant may be unrepresented at the commencement of the process. It having been noted that even though many litigants will eventually be represented, particularly those who face letters of claims may in the first instance be unrepresented.

These drafts are being submitted for consultation during 2008 and it is intended to hold a Forum in March 2008 to consider both these proposals and to scrutinise the existing subject-specific protocols in order to produce modern, up-to-date and streamlined versions for the future.

**Mark Harvey**  
Chair

## Committee Members

District Judge Suzanne Burn  
(Chair)

Fiona Freedland  
Janet Howe  
Mr Justice Langstaff  
William Norris QC  
John Pickering  
Janice Smith

David Southwell  
Christine Tompkins  
Master John Ungley  
Steve Walker  
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

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

In late 2006 the Committee submitted to the MOJ a detailed paper that analysed the law and case authorities on who should bear the costs of caring for a seriously disabled accident victim who was entitled to public assistance with his needs, the tortfeasor, or the state. This discussed a number of options and recommended that the government implement a solution to the problem as soon as possible, as the absence of a clear policy and relevant legislation is causing considerable uncertainty to litigants and public authorities, and resolving the issue on a case by case basis causes delay and increases litigation costs significantly. Although the government has not yet made any decisions, the Committee's work strongly influenced and was acknowledged in the MOJ consultation paper on Damages CP 9/07 published in May 2007 to which the Committee submitted a detailed response (see below).

### Care claims

In 2005 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 template for a report. A very successful awayday forum of stakeholders took place in October 2005. Agreement was reached in principle to the incorporation into best practice guidance of the above documents. In November 2005 the main Council agreed that this project should be taken forward.

Considerable progress has been made since then. Several meetings of the working group took place in 2006 and 2007, and in July 2006 a meeting was held with a number of care experts and case managers that produced many useful comments on the working papers. The Committee discussed drafts of the papers twice in 2007 and the draft guidance is currently being prepared for wider consultation with stakeholder groups.

### MOJ Consultation on Damages

The Committee responded in July 2007 on behalf of the Council to this important consultation on recommendations from the Law Commission papers on damages of the last 10 years. The response welcomed the consultation and commented in detail on the consultation questions but also made the following general comments:

- expressing disappointment that the opportunity has not been taken to conduct a more fundamental review of damages, especially as there have been many changes in personal injury law and practice in the last 10 years.
- expressing particular disappointment that no recommendations had been made in respect of claims for psychiatric injury, other than to leave the development of the law to the courts, when the senior judges had said on several occasions that it must be for Parliament to undertake the task of radical law reform in this area, and after the Commission considered carefully the difficult issues and provided a draft bill.
- expressing the same view in relation to aggravated and exemplary damages for which the Commission made proposals for modest change which the government had rejected.
- suggesting that the time was right for research into a number of aspects of personal injury damages, including claimants' and the public's perceptions of bereavement damages, and claimants' and their families' experiences after the receipt of the damages award in serious injury claims as the only previous research in the latter area was conducted nearly 20 years ago. It is very difficult, therefore, in the Committee's view for an informed debate to take place on future policy and legislation when so little is known about the effectiveness or otherwise of the many changes that have been made to large personal injury awards in the last 20 years and about claimants' experiences of living with their awards.
- suggesting also that some comparative studies of personal injury damages in Europe and other jurisdictions should be undertaken before introducing new legislation as the European Commission wants to move towards harmonisation or personal injury damages across member states.

### Indemnities for future loss

In 2002 the Master of the Rolls Structured Settlement Working Party recommended that the courts be given the power to make orders for defendants of large claims to give indemnities to claimants, for instance to cover the cost of residential and other services that are supplied to seriously injured claimants by local authorities (and therefore not provided for in the claimant's damages) if the authority seek to recover those costs from the claimant, or alternatively withdraw the services. Occasionally indemnities are agreed between the parties in personal injury claims, but at present the court has now power to so order. In 2007 the Committee set up a working party to progress this. An interim report was prepared and discussed at two meetings and the CJC is considering an awayday forum of stakeholders.

### **Damages for accommodation costs**

The Committee has another project ready to start, on damages awarded for accommodation costs (where the current law does not provide for a claimant who needs substantial alterations to their existing home or a new home to meet their needs, to recover the actual costs incurred but only a proportion of same, which means many claimants have to use damages awarded for care or pain and suffering to provide that accommodation) but concluded at a meeting in September 2007 that this work should also start with a forum of stakeholders and interested parties.

### **Other Matters**

#### **Periodical payments**

The Committee is continuing to monitor the operation of the new regime in periodical payments in practice including important decisions of the Court of Appeal.

#### **Committee membership**

During 2007 John Higgins of AIG insurers joined the committee to replace David Southwell of Zurich. There will shortly be a number of further changes to the membership of the committee. The Chairman has been appointed to the Civil Procedure Rule Committee and to the training team of the Judicial Studies Board Civil Refresher course for judges and has had to resign because of these other commitments. William Norris QC has also resigned from the Committee after a number of years of very valuable service and Master Ungley is retiring as a judge in 2008.

**Suzanne Burn DJ**  
**Chair**

# Articles and Publications on Civil Justice Council Issues

## Rolls choice

Sir Anthony Clarke tells Neil Rose he is starting to find his way through the 'bewildering' costs jungle.

The Master of the Rolls has many functions in addition to his judicial role. At least until the legal services board is created, he oversees the solicitors' profession, and even chairs the committee which advises the Lord Chancellor on public records, a legacy of the post's 13th century origins as assistant to the Chancellor, who was then the King's Chaplain and secretary. The Master of the Rolls was a cleric whose task was to look after the King's official correspondence, which was recorded on parchment rolls. He is also, of course, head of civil justice, and a key part of that has become chairing the Civil Justice Council (CJC). The current incumbent, Sir Anthony Clarke, had some big shoes to fill after Lord Phillips became Lord Chief Justice in 2005, and like his predecessor, he has had to get to grips with a costs war he has clearly found regrettable and distasteful. But 'bewildering' is the word Sir Anthony uses on being thrown into this particular jungle, when speaking to Litigation Funding during the CJC's recent costs forum. 'I'm gradually learning a bit about it but it is very complicated.'

Indeed, some have suggested that the Court of Appeal is not the best place for the war to play out – after all, most of its barrister judges do not know one end of a bill from the other. 'There's some truth in that,' Sir Anthony concedes, 'but you've got to have somebody to decide the issues of principle and I don't agree that the Court of Appeal hasn't been able to provide sensible guidance... It is true that some Court of Appeal judges know more about costs than others, but then some know more about marine insurance than others.' (Sir Anthony specialised in maritime law at the bar and was Admiralty Judge in the 1990s.)

## Out of control

So why have the costs aspects of the Civil Procedure Rules failed? 'No satisfactory arrangement has so far been reached to control the proportionality problem,' Sir Anthony replies. 'The courts don't seem to have been able to keep the control that Lord Woolf had in mind... Every time we see a bill of costs in the Court of Appeal for half a day, we're always astonished at what the costs actually are. I just think we need to have a more robust approach than we have had to date.'

This is, he makes clear, a message to the judiciary, as is his desire to see greater court control of budgets and estimates. 'There has been a certain laxity about this. The courts haven't in the past policed that in a way that I think they should.' The issue also leads him to costs-capping, for which he sees a role when used summarily by district judges in smaller cases, and also in some types of larger litigation.

The conundrum, the Master of the Rolls believes, is incurring the considerable expense of the costs-capping application itself when in reality many cases settle before trial with provision for costs. 'It is a very difficult one and one that the rules committee needs to give some consideration to. And there is the question of whether the same principles should apply in every kind of case.' It may be appropriate in personal injury (PI) matters, for example, but if in a large commercial case Clifford Chance is on one side and Freshfields on the other, charging large sums of money but at a level the market will bear, he asks: 'Why should the courts not just let them get on with it?'

One aspect of control for which Sir Anthony and Senior Costs Judge Peter Hurst have been criticised recently is the decision without consultation to increase the guideline hourly rates for 2007 by the retail prices index (RPI). This comes on the back of the Office of Fair Trading complaining – 'with some justification', he admits – that the underlying figures previously came from the people who benefited from them.

The answer is the creation of the costs council recommended by the CJC, Sir Anthony says. While he is 'reasonably confident' it will happen, it has not yet. 'Until it does, we decided it wasn't really practical for us to carry out the kind of exercise which the costs council should be carrying out and the most sensible thing to do for the moment was simply to apply an RPI-related percentage to the figures. I can see that is not the perfect solution but that is the interim solution.'

The costs council would have a broader brief than just this – such as the levels of the predictable costs scheme – although it is as yet uncertain whether it will be free-standing or a subsidiary of the CJC. 'We are waiting and have been for some time. We realise the Lord Chancellor is thinking about other things apart from the costs council but it is becoming quite urgent.'

### **Fixed vision**

The Master of the Rolls says he is in principle fully behind the key recommendations of the CJC's latest report on alternatives to funding litigation (see page 6). He clearly shares the concerns of those who fear the instability of the after-the-event (ATE) insurance market, and says it would be in everyone's interests to have a better understanding of the mechanics of how it works. He observes that the market would be bolstered by removing the right of defendants to recover costs, but does not find the idea 'very attractive'.

ATE could also be hit by the government's plans to reform the claims process, and speaking before they were known, Sir Anthony says he has changed his mind on the issue of the small claims limit since being in post. 'When I first came into this, I thought there was a strong case for raising the small claims limit to something significantly greater than £1,000 for PI cases. But as I've listened to the debate over the past 18 months or so, I've concluded that's wrong and while probably a small inflation-based increase – to, say, £1,250 or possibly £1,500 – would be OK, anything more than that would be a mistake, and I think most district judges would agree with that.'

'I've been around and talked to quite a lot of district judges. They feel confidence with the current limit – they would probably want to increase it in the way I've indicated – but otherwise they do consider the assistance of lawyers as valuable in arriving at sensible figures after that.'

Instead, Sir Anthony feels ‘very strongly’ that the way forward is to extend the predictable costs scheme for pre-issue road traffic cases to post-issue and other PI claims. He would also increase the fast-track to £25,000 and allow an opt-in up to £50,000. ‘I can’t see what the downside is,’ he says. ‘In some types of public liability or employer’s liability cases there might be other considerations, but I don’t see why you can’t have a special category where you can take it out of the scheme if appropriate.’

When it comes to the proposed supplemental legal aid scheme, Sir Anthony says he was struck by the lack of disagreement at the forum over the idea of taking a slice from damages to fund it. ‘If I were a claimant and I was offered the opportunity of recovering nothing or recovering 75% of the damages, then I’d take the latter,’ he argues. ‘One can see the government is reluctant to agree to it or make provision for it if there is a real prospect of the claimant having 100%, but for example in Hong Kong it seems to work perfectly well, admittedly in a limited number of cases.’

### **A contingent future**

He seems more enthused by commercial third-party funding in the wake of the *Fostif* decision by Australia’s highest court. ‘I have little doubt that *Fostif* has pointed the way. Whether we would approach it in quite the same way, whether we would think it desirable to have more control than they had in mind, I don’t quite know. But I don’t see why the principle of third-party funding, subject to reasonable control, should not be accepted here. As long as [it is] willing to be transparent, one can see a public interest in supporting the funder.’

The Master of the Rolls argues that there have been third parties in control of litigation since the year dot – such as insurers. ‘The insurer’s interest in a policy has always been accepted by the English courts in the way that the pure funder’s interest has been regarded as improper or insufficient. But actually I think the distinction between them is pretty narrow... If the funder, whether an insurer or pure funder, is going to fund litigation which the claimant wouldn’t or couldn’t otherwise pursue, then why not?’

Consistent with his willingness to at least consider all possibilities, Sir Anthony thinks more work should also be done on contingency fees as they could improve access to justice by encouraging solicitors to take on riskier cases. ‘Over the years, I’ve always been rather sceptical [about contingency fees] because I’ve been concerned they may give rise to abuse among claimant lawyers. I feel sure that’s much less likely here than in the US, but I’ve often worried about whether it’s entirely desirable to give the claimant’s lawyer a stake in the result. I think you have to trust the professionalism of the solicitor. And the fact is there is little distinction in principle between the conditional fee and the contingency fee... My personal view is that we could work a contingency fee scheme so long as it was properly regulated.’

The greatest task of all though, arguably, is persuading the government to take heed. Sir Anthony points to the representatives the Department for Constitutional Affairs had at the forum and insists it is interested at looking at alternative and better funding schemes. ‘They’re beginning to realise that they have to plan for the future. If something ghastly did happen to the ATE market and there hadn’t been any planning or thought given to it, they’d look very silly. Good sense suggests that they would be willing to give some consideration to it.’

**This article was first published in *Litigation Funding* magazine April 2007**



## Priorities for 2008

For the forthcoming year, the main priorities will be:

- **ADR**

The CJC with the Civil Mediation Council will deliver judicial awareness training. Consideration will be given to the implementation of the EU ADR Directive.

- **Costs and Funding**

Papers will be developed on; the light touch regulation of third party funding in multi party claims, the operation of contingency fees in the United States, and an overall review on the operation of current funding systems.

Predictable Costs will continue to be rolled out for ATE, Medical Expert Reports, Public Liability Claims, and post-issue injury claims.

Consideration will be given to developing proposals for the longer term sustainable funding of high quality civil legal aid services.

- **Multi party Consumer Redress**

A paper will provide formal advice to the Lord Chancellor on the development of processes for multi party consumer redress. These will consider funding options, judicial certification and control, opt-in or opt-out, and the distribution of awards. There will be a particular focus on competition and product liability actions.

- **Claims Process**

The Council will continue to assist the Ministry of Justice as a facilitator, as required.

- **Housing and Land**

A pre-action protocol will be developed for mortgage possession claims. Consideration will be given to the Law Commission's Housing Disputes paper.

- **Serious injury**

A consultation on the costs of future care, leading to a Care Claims Protocol.



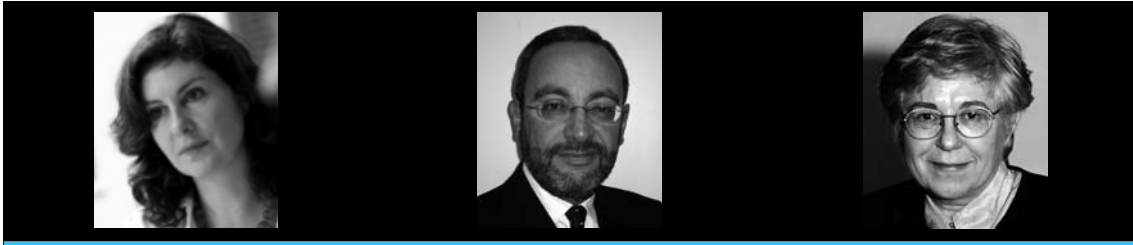
## The Civil Justice Council Members



**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 to 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 Moore-Bick** was appointed Deputy Head of Civil Justice on 1st January 2007. He was called to the Bar (Inner Temple) in 1969 and was appointed Queen's Counsel in 1986. He was appointed a High Court Judge of the Queen's Bench Division in 1995 and was Judge in charge of the Commercial Court between October 2000 and March 2002. He has been a Lord Justice of Appeal since 2005.

**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 and of which he is an Honorary Fellow. 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. He is the Treasurer of the Inner Temple for 2006.



**Tamsin Allen**

is a solicitor and a partner with Bindman and Partners. She is head of the media and information law department specialising in defamation, privacy, copyright and data protection law. She also represents claimants in international human rights and public law litigation. She is a committee member of the Commonwealth Press Union Legal Support Committee and was educated at Lancing College and Balliol College Oxford.

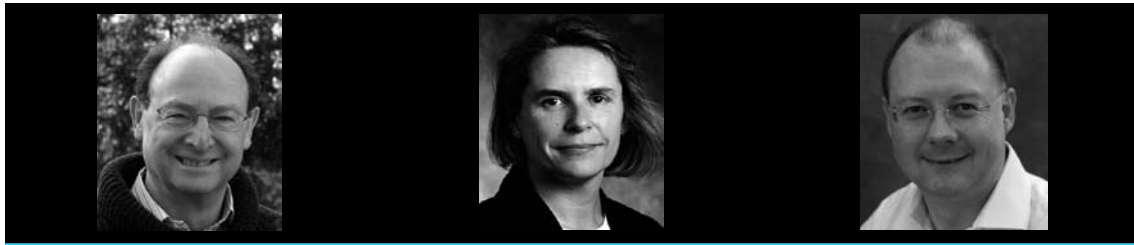
**Michael Black QC**

is a barrister practicing from Two Temple Gardens where he is Head of the International Arbitration and Projects Group. He was called to Bar in 1978 and took Silk in 1995. He was appointed a Recorder and a Deputy Judge of Technology and Construction Court in 1999. He served on the Civil Procedure Rule Committee from 2000 to 2004. He is Visiting Professor of Construction and Engineering Law at the School of Mechanical, Aerospace and Civil Engineering, University of Manchester where his particular interest is in dispute resolution. He has written extensively on civil procedure both in the UK and abroad.

**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 and 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. Suzanne has been a member of the Civil Justice Council since 2001 and is chair of the Serious Injury and Clinical Negligence Committee.





**Mr Justice**

**Stanley Burnton**

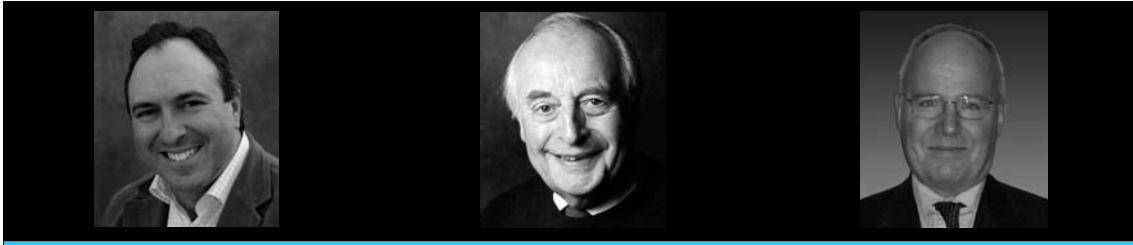
was educated at Hackney Downs Grammar School and St Edmund's Hall Oxford, where he read Jurisprudence. He graduated in 1964 and was called to the Bar in 1965. He practised as a commercial lawyer, took silk in 1982, was a recorder and sat as a deputy High Court judge in the Chancery Division from 1994. 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. He is that Judge in charge of Modernisation, IT and the Court Estate.

**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.

**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 HLG.



**Mark Harvey**

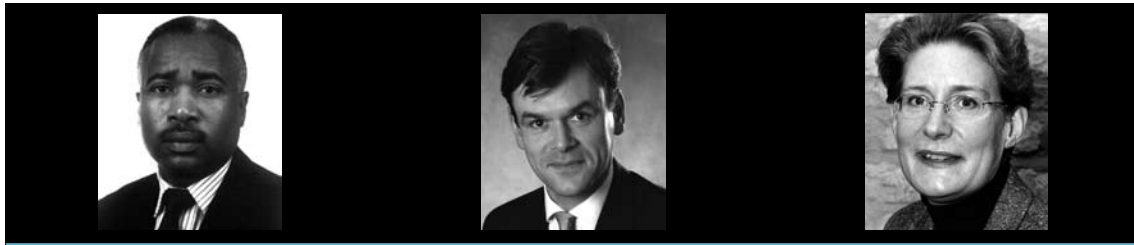
is the partner in charge of Harmful Products litigation at Hugh James in Cardiff. He has obtained compensation for victims of defective consumer products including both pharmaceuticals and medical devices. He represented victims of many major travel accidents of the last twenty years as well as the first rugby player to successfully sue another for injury occurring during an international rugby match. He is a Fellow of the Association of Personal Injury Law, a UK Governor of the American Association for Justice (formerly the Association of Trial Lawyers of America), and President of Cardiff Law Society. He is author of the *APIL Guide to Conditional Fees*; chapters on Group Actions and Product Liability in *APIL Personal Injury Law, Practice and Precedents* published by Jordans as well as a chapter in the Law Society's *Civil Litigation Handbook*.

**Graham Jones**

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. Graham is now retired, but continues to sit and is currently acting Designated Civil Judge for Wales.

**Robert Jordan**

is a District Judge at Leeds Combined Court Centre having been appointed in 1999. As a practitioner he was senior partner of Jordans solicitors practising in the heavy woollen district of Yorkshire. He sits on the pre-action protocol committee and chairs the housing and land committee of the CJC. He is the District Judge representative on the insolvency court users committee and a member of the Association of District Judges national committee.



**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.

**Alistair Kinley**

is Head of Policy Development at insurance law firm Berrymans Lace Mawer, where he is responsible for BLM's engagement with government departments and regulators. He joined BLM at the start of 2006 following ten year's experience at the Association of British Insurers, where he coordinated industry policy on a wide range of civil justice issues, notably on conditional fees and costs following the Access to Justice Act 1999. He has been a member of the Ogden Tables Working Party and was a member of the Lord Chancellor's Committee on Claims Assessors (The Blackwell Committee). He worked in the insurance market for 5 years in the early 1990s after graduating from London and Paris Universities.

**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 150 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.

**Professor Richard Moorhead** is a Professor of Law and Deputy Head of Cardiff Law School and their Director of Research. He is a leading socio-legal researcher on courts, legal aid and the legal profession. Before joining the Civil Justice Council, he was a member of the Legal Services Consultative Panel. He has acted as specialist adviser to the House of Commons Constitutional Affairs Committee on three occasions, most recently on their inquiry into the Carter Reforms. His published work includes an evaluation of pre-action protocols and a study on litigants in person as well as numerous studies on legal aid, with a particularly emphasis on civil legal aid and access to justice. He is currently completing work on public and participant perceptions of courts for the Ministry of Justice.

**Michael Napier CBE, QC** 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, and a member of the Council's Executive Committee.



**Anna Rowland**

joined the Law Society in 1997 from legal practice. She has had responsibility at the Law Society for a broad policy portfolio, including family law, children law, alternative dispute resolution, civil litigation and civil justice and is now Acting Head of Regulatory Affairs. She had detailed involvement in the implementation of the Woolf reforms, the development of pre-action protocols, the development of a streamlined process for small claims and awareness raising with the legal profession about alternative dispute resolution.

**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.

**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.



**John Usher**

is a solicitor, who works as a trade union legal consultant and labour law lecturer at UCL. He is also the Director of the United Campaign to Repeal Anti-Trade Union Laws and has a keen interest in collective fundamental rights and freedoms, as well as access to justice. He has over 20 years experience as a claimant personal injury practitioner and employment lawyer, having been a partner at Thompsons for much of that time. He was involved in training at his law firm, including in relation to the introduction of the new civil procedure rules in 1999/2000.

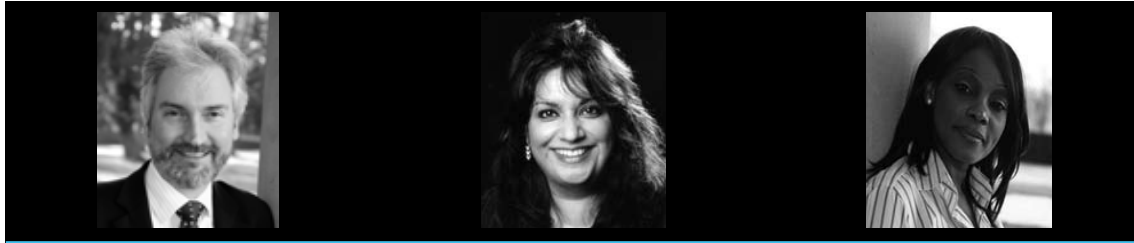
**Tim Wallis**

is solicitor and mediator and a Partner with Crutes Law Firm. He joined Crutes in 1976 and became a Partner in 1981, Joint Managing Partner in 1995 and was Senior Partner/Chairman 2000-2005. Initially a claimant lawyer for trade union members, he subsequently specialised in defendant civil litigation, mainly for insurers and also NHS clients. He is a member of the Civil Justice Council Executive Committee and Chair of the ADR Committee. Tim is a former President of the Forum of Insurance Lawyers (FOIL), former member of Civil Litigation and ADR Committees of the Law Society. Trained as a mediator in 1994 and researched ADR in USA, lectures on ADR and contributes to Sweet and Maxwell's "The Litigation Practice" (section on ADR).

**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.

## The Secretariat



**Robert Musgrove**

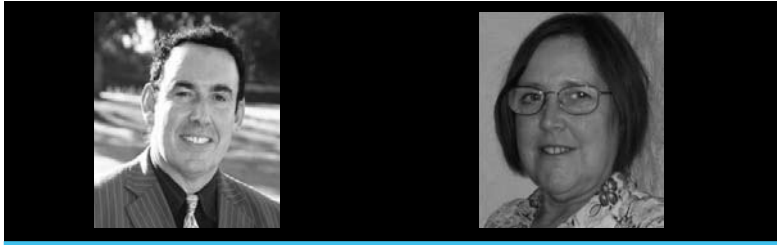
is Chief Executive of the Civil Justice Council. He has worked in the administration of the civil justice system for twenty five years and has practical experience of the operation, planning and financing of the court system. He has been Head of Project Management for the Access to Justice Reforms in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

**Anthea Peries**

previously worked in the Law Commission and joined the Civil Justice Council Secretariat as General Office Manager in October 2006. She has worked in the Department for Constitutional Affairs for number of years and her experience has ranged between HR, Information Technology, Facilities and Project Management. She is also a graduate member of the British Psychological Society.

**Kitty Doherty**

joined the Civil Justice Council in October 2006. She previously worked in the Civil Appeals Office and the Family Division. She works with the committees and is responsible for the Civil Justice Council website, policy matters, recruitment, annual report and venue finding for conferences.



**Graham Hutchens**

previously worked in the Judicial Appointments Commission and joined the Civil Justice Council in February 2007. He has nearly thirty years experience working for the Ministry of Justice ranging between Human Resources, Finance and Project Management. He presently manages a number of the CJC committees and conferences. He is also responsible for CJC's finance and some recruitment matters.

**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 Ministry of Justice 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 E218, Royal Courts of Justice, London, WC2A 2LL or email to [cjc@judiciary.gsi.gov.uk](mailto:cjc@judiciary.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](http://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





Civil Justice Council  
Royal Courts of Justice,  
Strand, London WC2A 2LL