

# Civil Justice Council

Annual Report  
2010

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## Foreword by the Master of the Rolls

It is now just over a year since I was appointed Master of the Rolls and Chairman of the Civil Justice Council.

I have learnt a great deal during that year, not least the important role which the Civil Justice Council has played in ensuring that the civil justice system operates as fairly and efficiently as possible. The work it has done in its first decade is impressive. That work has been the result of the unstinting support, expertise and effort of its voluntary members, interns, and secretariat. It has also been the result of the work and energy, as well as vision, of its Chief Executive, Bob Musgrove.



Together with my predecessors— Lord Phillips and Lord Clarke – I owe a debt of gratitude to all who have been involved in its success. In particular, we owe a debt of gratitude to Bob, who left his post in October 2010, to take up a fresh challenge as Chief Executive of the Qatari Civil and Commercial Court. I wish him well in his new venture. As I am sure do all the Council members, I welcome Alex Clark, Bob’s successor, as Secretary to the Council, and wish him well in his new post.

The Council faces further challenges in the year ahead. In the light of the difficult economic times it has to trim its cloth appropriately. I am confident, that after a brief period of adjustment, the CJC will be sufficiently responsive and flexible to emerge through this period as an even more effective force for civil justice reform, and I am positive about the changes which it could make in order to achieve this.

Master of the Rolls  
The Rt. Hon. Lord Neuberger of Abbotsbury

## About the Civil Justice Council

The Civil Justice Council is an independent public body whose function is to oversee the civil justice system and to recommend appropriate reforms to government. In this regard, the CJC acts as the leading civil justice think tank and watch dog in England and Wales.

The Civil Justice Council is funded by the Ministry of Justice. Since 1 October 2010, it has been sponsored by the Judicial Office; the body of civil servants which set up to support the judiciary following the introduction of the Constitutional Reform Act 2005.

The Civil Justice Council was established under the Civil Procedure Act 1997 as part of the Woolf reforms; the most extensive reforms of the civil justice system for over a century. This Act sets out the functions of the CJC as follows:

- a. keeping the civil justice system under review;
- b. considering how to make the civil justice system more accessible, fair and efficient;
- c. advising the Lord Chancellor and the judiciary on the development of the civil justice system;
- d. referring proposals for changes in the civil justice system to the Lord Chancellor and the Civil Procedure Rule Committee; and
- e. making proposals for research.

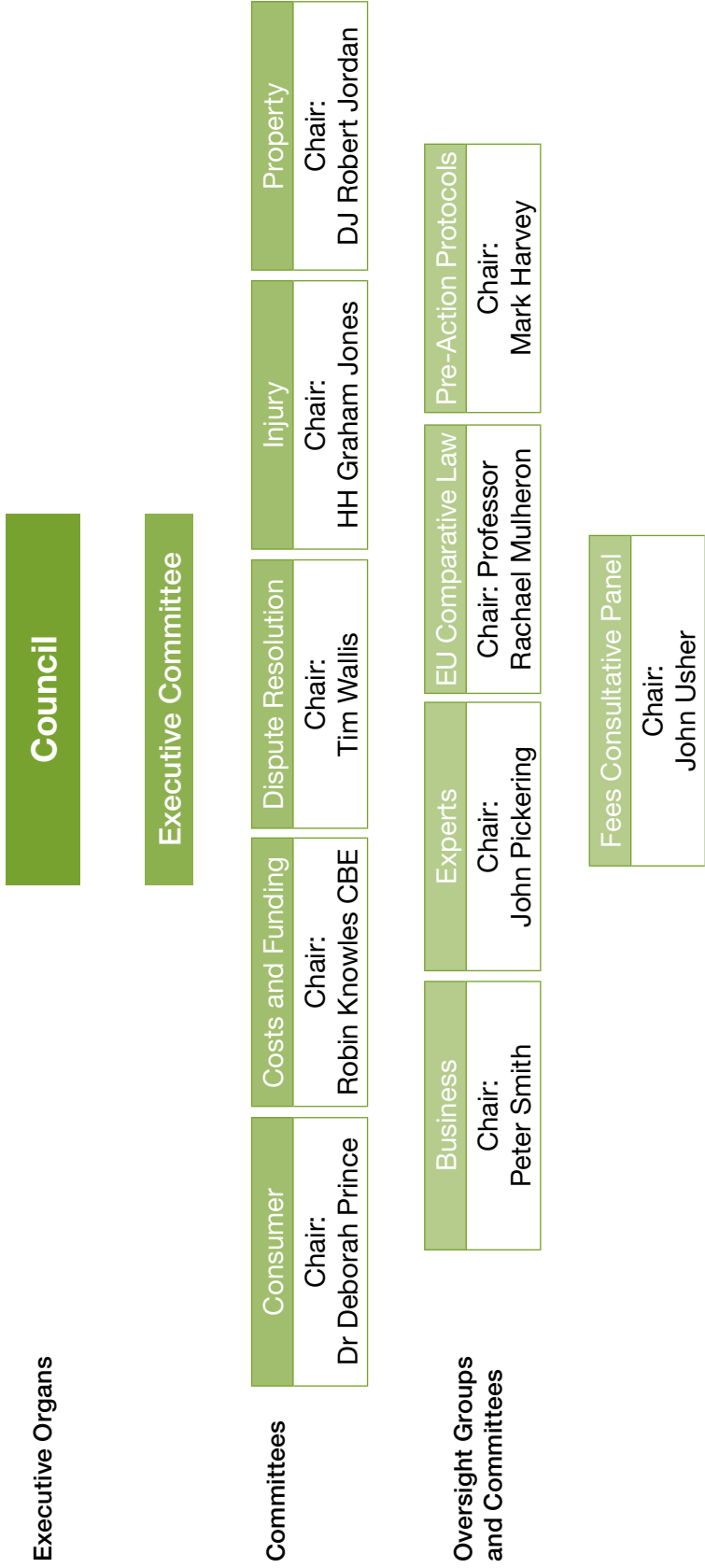
The Civil Justice Council performs its statutory functions through its main Council body and network of committees and oversight groups. These bodies are populated by nearly 100 unpaid volunteers who represent a wide range of civil justice expertise, experience and interests. The CJC also performs its statutory functions, albeit to a lesser degree, through the hosting of targeted stakeholder events.

Ten years after its creation, the Civil Justice Council was independently reviewed by Dr Jonathan Spencer. His review identified the main strengths of the CJC. These strengths include the CJC's ability to facilitate constructive dialogue between diverse stakeholders, and the mediating role it has played in resolving different legal issues.

The recent reduction of the Civil Justice Council's budget means that it will have to evaluate how it can remain as effective as before with less resource. This will involve a reassessment of its work programme,; priorities,; structure, and ways of delivering its work, at the next Council meeting in November 2010.

The following pages detail the operation of the Civil Justice Council's constituent bodies, and the chart opposite reflects the current structure of the CJC.

# Structure of the Civil Justice Council (August 2009-)



## Council

The Council is the main organ of the Civil Justice Council. It is chaired by Lord Neuberger, in his capacity as Master of the Rolls and Head of Civil Justice, and the vice-chair, is Lord Justice Moore-Bick in his capacity as Deputy Head of Civil Justice. The only other ex officio appointments to the Council are that of the Ministry of Justice and Legal Services Commission representatives.

The Council is currently composed of 24 members. Council members hail from a diverse range of backgrounds. The Civil Procedure Act 1997, which established the Civil Justice Council, made provision for the types of members which must be represented on it. They include the following:

- Judges;
- Legal practitioners;
- Civil servants concerned with the administration of the courts;
- Consumer affairs experts;
- Lay advice sector representatives; and
- Persons able to represent the interests of particular kinds of litigants (for example, businesses or employees).

In his independent review of the Civil Justice Council in 2008, Dr Jonathan Spencer found that the composition of Council was unbalanced. Interviewees felt that the Council was not sufficiently user-driven and was too weighted towards judges and lawyers. Dr Spencer recommended the rebalancing of the Council's membership to comprise more representatives of court users, including business. Over a succession of recruitment campaigns conducted in 2008 and 2009, the composition of the Council was adjusted to reflect a greater user focus.

The Council meets on a quarterly basis to: monitor the progress of its work programme and the operation of its committees; to consider draft proposals for reform and consultation responses which emanate from its committees and working groups; and to hear from speakers about important civil justice-related issues.

At its next meeting in November 2010, the Council will consider ways in which it can increase its efficiency. The issues to be considered will touch upon the role of the Council, the size and composition of its membership, and its working methods.

The pages which follow contain the biographies of all of our Council members, and include the dates of expiry of their membership terms.

**Master of the Rolls The Rt. Hon. Lord Neuberger of Abbotsbury** was appointed as Master of the Rolls in 2009. He was educated at Westminster School and Christ Church, Oxford University. After working at NM Rothschild & Sons 1970-73, he was called to the Bar (Lincoln's Inn) in 1974. He was made a Bencher for Lincoln's Inn in 1993.

He was appointed as a Queen's Counsel in 1987; as a Recorder in 1990; and as the Supervisory Chancery Judge for the Midland, Wales and Chester and Western Circuits in 2000. In 2004, he was appointed as a Lord Justice of Appeal, and in 2007 he was appointed as a Lord of Appeal in Ordinary (a 'Law Lord') and given a life peerage.

Lord Neuberger led an investigation for the Bar Council into widening access to the barrister profession. He also served on the panel on fair access to the professions led by Alan Milburn.

**Ex officio appointment**

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**Lord Justice Moore-Bick** was appointed Deputy Head of Civil Justice on 1 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.

**Ex officio appointment**

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**Lord Justice Stanley Burnton** was educated at Hackney Downs Grammar School and St Edmund Hall Oxford, where he read Jurisprudence. He graduated in 1964 and was called to the Bar in 1965. He had a broad practice in civil cases, and subsequently specialised in commercial law. He 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 and was nominated to the Administrative Court shortly afterwards. As a High Court judge, most of his work was in that Court, although he also heard civil claims in the Queen's Bench list, tried criminal cases on circuit and sat in the Criminal Division of the Court of Appeal. In April 2008 he was promoted to the Court of Appeal.

He is an Honorary Fellow of St Edmund Hall.

**Membership expires: 31 January 2012**

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**Duncan Campbell** is Legal Adviser at the CBI, handling competition policy and dispute resolution. He was formerly General Counsel & Secretary of IBM UK handling a range of commercial and corporate matters and dispute resolution.

He is a practising mediator with CEDR and LawWorks and on the panel of the Court of Appeal Mediation Scheme. He is a member of the Determinations Panel of the Pensions Regulator and the Consumer Panel of the Bar Standards Board and chairs the Adjudication Committee of the Lending Standards Board.

**Membership expires: 14 December 2012**

**Amanda Finlay CBE** is a Council member of Justice, a trustee of LawWorks and a public governor of Oxleas NHS Mental Health Trust. She was formerly a senior civil servant in the Ministry of Justice responsible for legal services reform and legal aid strategy. As senior policy lead for family and administrative justice, she chaired reviews of public and private family law and led the work towards a Unified Tribunal Service. She was Secretary to Lord Woolf's Inquiry: Access to Justice and LCD lead on the Human Rights Act.

**Membership expires:** 14 December 2012

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**Mark Harvey** is the partner in charge of Harmful Products and Overseas Accidents litigation at Hugh James in Cardiff. He has obtained compensation for victims of defective consumer products including both pharmaceuticals and medical devices as well as the victims of many major travel accidents of the last twenty years.

He is a Fellow of the Association of Personal Injury Law and a UK Governor of the American Association for Justice. 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.

**Membership expires:** 31 January 2012

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**His Honour Graham Jones** was until retirement in July 2005 a Senior Circuit Judge and Designated Civil Judge for South and West Wales, subsequently Wales. Having read law at St John's College Cambridge, he was admitted as a solicitor in 1961. Until 1985 he was in private practice in Cardiff, specialising in civil litigation and advocacy. From 1982-1984 he was President of The Associated Law Societies of Wales; and from 1980-1985 a member of the Lord Chancellor's Legal Aid Advisory Committee. Graham was appointed Deputy Circuit Judge in 1975, Recorder in 1978 and Circuit Judge, the first solicitor Circuit Judge in Wales, in 1985. He was Resident and Designated Judge at Cardiff County Court 1994-1998, then becoming Designated Civil Judge. He was authorised to sit as a Judge of High Court 1994-2005. On retirement, he was appointed Deputy High Court Judge and has continued to sit part time to hear civil cases, combining this with work relating to aspects of their judicial systems in new member states of the EU.

**Membership expires:** 31 January 2011

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**District Judge 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 is the District Judge representative on the Insolvency Court Users' Committee and a member of the Association of District Judges' National Committee. In 2009, he was appointed as a Recorder.

**Membership expires:** 31 January 2012



**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 years of 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.

**Membership expires:** 31 January 2012

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**Robin Knowles CBE, QC** is a specialist in commercial and chancery matters, and dispute resolution. A former Chairman of the Commercial Bar Association, he is a Deputy High Court Judge (authorised to sit in the Chancery Division and the Queen's Bench Division) as well as a Crown Court Recorder. He was a member of the Aikens working party on long and complex trials or "supercases" and is a consultant to the Qatar Financial Centre Civil and Commercial Court and Regulatory Tribunal, as well as the Qatar Law Forum on the rule of law. Robin has a long-standing commitment to pro bono work, and its development, coordination and encouragement. He was awarded the CBE in 2006 for service to pro bono legal services.

**Membership expires:** 30 April 2012

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**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.

**Membership expires:** 31 January 2012

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**Mr Justice Alistair Macduff** was called to the Bar in 1969, became an Assistant Recorder (Midland Circuit) in 1983 and Recorder in 1997. He was appointed to the Circuit Bench in 1997, was appointed as a Deputy High Court Judge in 1998 and became Designated Civil Judge for Birmingham in 2000. He was appointed to the High Court Bench in 2008 and became a Council Member in 2009.

**Membership expires:** 31 January 2012

**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 mentally incapacitated 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.

**Membership expires:** 31 January 2012

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**Professor Richard Moorhead** is a Professor of Law and Deputy Head of Cardiff Law School. 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 three studies of contingency fees, an evaluation of pre-action protocols, work on public and participant perceptions of courts 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 Community Legal Aid Centres and Quality Assurance for criminal advocates.

**Membership expires:** 31 January 2012

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**Professor Rachael Mulheron** is a Professor at the Department of Law, Queen Mary University of London, where she has taught since 2004. Rachael's principal field of academic research and writing concerns class actions jurisprudence. In addition, Rachael has advised a number of law reform commissions, government departments, and law firms, on collective redress-related matters, and in 2008, prepared a legal and empirical study for the Civil Justice Council on the proposed reform of collective redress in England and Wales. Prior to her academic career, Rachael practised as a litigation solicitor in Brisbane, Australia.

**Membership expires:** 30 April 2012

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**Dr Jane Phipps** is a Debt Specialist Support Officer for Citizens Advice and provides casework support, research and training for those who advise clients in debt. Jane has specialised in civil justice issues as they affect individual litigants for thirty years, first in academic research concentrating on defendants in county court proceedings and then as an adviser for London Borough of Lambeth, Oxford Citizens Advice Bureau, and Citizens Advice. Jane has published her doctoral thesis and written for a number of journals both academic and practical. She is currently Chair of the advice sector's County Court Issues Group, which is concerned with the issues affecting individual users of the county courts.

**Membership expires:** 14 December 2012

**John Pickering** is the Managing Partner of Irwin Mitchell Solicitors, a leading national law firm. He was formerly the National Head of the Personal Injury Division. He is a personal injury and clinical negligence lawyer. He has dealt with many precedent setting cases and his contribution to this area of law has been recognised by his acceptance as a Senior Fellow of APIL. He has been involved with international personal injury work for many years. He assisted with the founding of Pan European Organisation of Personal Injury Lawyers (PEOPIL) and is it's immediate past President. He is a member of the American Association for Justice (AAJ) and has served on its Board of Governors. John sits on the Civil Justice Council, he is a member of both the Law Society's and AVMA's (Action against Medical Accidents) clinical negligence panels and the Law Society's PI Panel.

**Membership expires:** 30 April 2012

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**Dr Deborah Prince** is Head of Legal Affairs at Which?, the independent organisation campaigning for consumers' rights and the publisher of Which? magazine.

Having studied Biochemistry at Imperial College, London, Deborah went on to work as a science journalist in Hong Kong before deciding to change direction and study law. She specialised in intellectual property upon qualification and spent many years at Baker and McKenzie providing IP law advice to a range companies. Deborah's first move in-house was to Tesco where she undertook a number of roles before being appointed Head of Corporate, Commercial and Litigation.

**Membership expires:** 30 April 2012

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**Patrick Reeve** joined the Justice Policy Directorate in March and heads the Civil, Family and Legal Aid portfolio of work.

Patrick started working life as a Solicitor in private practice and later joined the Legal Services Commission (LSC) as a Legal Adviser. Patrick held a number of other posts in the LSC, including his latest post as Director of Strategy, before joining the Justice Policy Directorate.

**Ex officio appointment**

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**Peter Smith** is Managing Director of FirstAssist Legal Expenses Insurance Ltd. Since graduating from Oxford University he has spent his career in the insurance industry in a number of underwriting and claims roles in the UK and abroad. He has gained substantial experience of civil litigation from both sides of the fence, funding either the claimant or the defendant, and contributed to numerous industry initiatives around the cost of litigation. Recent experience includes pioneering insurance funding solutions for collective redress actions.

**Membership expires:** 30 April 2012

**Colin Stutt** is a Barrister Who Left Private Practice To Join The Legal Aid Board In 1991. He Is Currently Head Of Funding At The Legal Services Commission, With Responsibility For The Rules Of Civil Legal Aid. Colin Has Worked Extensively On Civil Justice Reforms, Especially Costs, Public And Private Funding, Group Actions, Clinical Negligence, Human Rights And Adr, And Has Participated In Judicial Working Groups On Environmental And Public Interest Litigation. He Was One Of The Assessors To The Jackson Review Of Civil Litigation Costs.

**Ex Officio Appointment**

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**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 (RTA) 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) and has a particular interest in rehabilitation. Most recently Janet has participated in the Ministry of Justice/ Civil Justice Council mediations on streamlining the RTA process and on behalf of MASS she is a key stakeholder in the IT platform.

**Membership expires:** 31 January 2012

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**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 is a member of the Ministry of Justice's Advisory Committee on Civil Costs. He has over 20 years of 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. He is also an accredited mediator, a member of the Advisory Committee of Trust Mediation and a member of the Civil Mediation Council.

**Membership expires:** 31 January 2012

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**Tim Wallis** is an independent professional mediator. He has mediated industry disputes in the insurance and personal injury sector for the Civil Justice Council. His mediation work on the Ministry of Justice's streamlined personal injury claims process has led to his appointment as Chairman of RTA Portal Co Limited, confirming him as an independent neutral trusted by both the insurance industry and personal injury solicitors. Tim mediates throughout the jurisdiction and elsewhere and he writes on ADR for the White Book and other publications.

**Membership expires:** 31 January 2012

## Committees and Oversight Groups

The structure of the Civil Justice Council underwent considerable change in 2009. This structural change was brought about following an independent review of the CJC by Dr Jonathan Spencer. Dr Spencer felt that the CJC's committees should be more broadly-based and he suggested subject areas that committees could cover.

The Civil Justice Council established a committee structure which reflected the recommendations made by Dr Spencer. The CJC now has a set of standing committees which cover the following areas: consumer; costs and funding; dispute resolution; injury; and property.

Committees meet up on a quarterly basis and consider ways in which the civil justice system may be improved and make recommendations for reform. These recommendations are submitted to the Council for consideration. If approved, the recommendations are then passed onto the Ministry of Justice, the judiciary and/ or the Civil Procedure Rule Committee. Committees also draft responses to relevant consultation papers, which are submitted to the Council for approval.

In 2009, the Civil Justice Council also created a network of oversight groups to complement its committee structure. It was envisaged that oversight groups would monitor subject areas relevant to the work of most, if not all, committees, and that they would feed into their work programmes accordingly. In contrast to our committees, which meet up on a quarterly basis, it was envisioned that oversight groups would operate on a virtual basis with members communicating over e-mail. Oversight Groups have been established in the fields of business, EU & Comparative Law; Experts; and Pre-Action Protocols.

Our network of committees and oversight groups is populated by nearly 100 members. As with members of the Council, members of our committees and oversight groups are accomplished and hardworking professionals who represent a wide range of civil justice stakeholders. They are not remunerated for the work that they perform; important work that has, for example, included the introduction of a mortgage arrears pre-action protocol at the early stage of the financial downturn. All that our members receive in return for their efforts is reimbursement for reasonable costs of travel to meetings, tea and biscuits, and heartfelt thanks.

At the Council's next meeting in November 2010, members will explore ways in which all aspects of the CJC may be made more efficient. This will involve consideration of the structure of the CJC, as well as the activities, working methods and composition of its constituent bodies.

The pages which follow contain reports from our committees and oversight groups that account for the work that they have completed in the year following their creation in summer 2009.

# CONSUMER COMMITTEE

**Chair** Dr Deborah Prince, Head of Legal Affairs, Which?

**Secretariat support** Graham Hutchens

**Intern support** Jenni Simpson (September 2009 – February 2010)

Member	Title	Organisation
Lola Bello	Senior Policy Advocate	Consumer Focus
Steve Brooker	Consumer expert	
Richard Fairclough	District Judge	Manchester County Court
Amanda Finlay	retired Ministry of Justice; secretary to Woolf review	
Steve Hynes	Director	Legal Action Group
Alistair Kinley	Head of Policy Development	Berrymans Lace Mawer
Dr Philip Marsden	Director and Senior Research Fellow	British Institute of International and Comparative Law
Dr Jane Phipps	Debt Specialist Support Officer	Citizens Advice
John Usher	Legal Consultant	Usdaw
Kevin Westall	Head of Debt and Housing Branch	Ministry of Justice

The terms of reference of the Consumer Committee are:

- to promote the needs of the citizen/consumer in the civil justice system;
- to monitor existing practice and procedure in the civil justice system in terms of consumer access to justice, and make proposals to the Council for improvement;
- to promote awareness of civil justice, in particular improving access to advice, early intervention in dispute resolution, and improving legal literacy; and
- to contribute the consumer perspective to the Vision of Civil Justice Programme, including evaluation of the Civil Procedure reforms, and developing proposals for improvements to access to justice (as part of the programme).

Whilst data exists that relates to court usage, very little tells us much about how consumers view the court system or focuses on consumers' experiences of using the court. Therefore the Committee assisted in the Consumer Focus-led survey of consumer views and experiences of the court system and intends to analyse the results of this survey for use in its work.

At present the Committee is considering how best to inform and advise the CJC and suitable areas of focus.

# COSTS AND FUNDING COMMITTEE

**Chair** Robin Knowles CBE QC

**Secretariat support** Chloë Smythe

**Intern support** Cheng Leong Tan, Goksu Kalkan

Member	Title	Organisation
Khadija Ali	Joint Head of Pro Bono Barrister	London Muslim Centre Clarendon Chambers
Dominic Clayden	Director of Claims	Aviva
Amanda Finlay CBE	retired Ministry of Justice; secretary to Woolf review	Berrymans Lace Mawer
Peter Hurst	Senior Costs Judge; Assessor to the Costs of Civil Litigation Review	Senior Courts' Costs Office
Andrew King	Litigation Partner	Travers Smith
William Luker	Head of Litigation	RBS Group
David Marshall	Managing Partner	Anthony Gold Solicitors
Jeremy Morgan QC	Barrister; Assessor to the Costs of Civil Litigation Review	39 Essex Street
Rocco Pirozzolo	Senior Underwriter	QBE Underwriters
Dominic Regan	Freelance academic trainer and writer	
Colin Stutt	Head of Funding Policy	Legal Services Commission
Robert Wright	Head of Civil Legal Aid, Private Funding and Costs	Ministry of Justice

The Costs and Funding Committee of the CJC was newly established in 2009, replacing a previous Costs Committee. The terms of reference of the Costs & Funding Committee include:

- 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 effective solutions to costs and funding problems that may affect adversely access to justice, and the efficient operation of the courts.

Over the last 12 months, the Costs & Funding Committee has:

- assisted the Jackson Review generally, including (at the Review's request) the provision of advice on establishing a Costs Council, and on disclosure;
- supported the "legacy work" of the CJC in the field of costs and funding, including fixed costs in the fast track and the CJC's consultation on a voluntary code of conduct for third party funders;
- supported the three stakeholder events (including a Costs Forum, and a judicial forum on case management) organised by the CJC to follow publication of the Jackson Review;
- participated in (and supplied its Chair to chair) the joint CJC, MOJ, CPRC working group to formulate template Rules and PDs for Collective Redress;
- contributed to advice to the Ministry and the Judiciary on implementation of the Jackson Review, including approach, coordination and strategy;
- formed a sub-group to begin looking at the interface between private funding, public funding and pro bono provision.



# DISPUTE RESOLUTION COMMITTEE

<b>Chair</b>	Tim Wallis, Director, Expedite Resolution	
<b>Secretariat support</b>	Kitty Doherty	
<b>Intern support</b>	Padideh Dolatshahi (February 2009-October 2010) Liz Gardiner (February 2009-October 2010)	
<b>Member</b>	<b>Title</b>	<b>Organisation</b>
Tony Allen	Director	CEDR
Sir Henry Brooke	retired Court of Appeal judge; mediator	
Margaret Doyle	Independent Mediator/ADR Consultant	N/A
Professor Dame Hazel Genn	Professor	UCL
Mark Jackson-Stops	Mediator	In Place of Strife
District Judge Margaret Langley	District Judge	Central London County Court
Simon Madden	Head of Dispute Resolution Team	Ministry of Justice
David Pearson	Retired Deputy Treasury Solicitor	N/A
Colin Stutt	Head of Funding Policy	Legal Services Commission

The terms of reference of the Dispute Resolution Committee are:

- to provide advice to Government and other agencies on improvements to access to justice through the development and support for the use of ADR in the civil justice system;
- to provide a forum for the consideration by stakeholders, the judiciary, and ADR providers to debate initiatives relating to the use of ADR;
- 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; and
- to contribute the ADR perspective to the Vision of Civil Justice Programme, including evaluation of the Civil Procedure reforms, and developing proposals for improvements to access to justice (as part of the programme).

The Committee has embarked on a wide-ranging work programme including:

- the deployment of interns on projects aimed at mapping ADR input in legal education and community mediation;
- preparatory meetings on proposals regarding the creation of an ADR handbook;
- consulting district judges on the achievement of high referral rates; updating “judicial referral to mediation”, and the provision of mediation training.

In addition to this, the Committee is poised to contribute to the work of the Pre-Action Protocol review team. It has also considered a Mediation Protocol to raise the awareness of ADR and kept the issue of mandatory mediation under review. On many of these items the Committee has worked closely with the Civil Mediation Council and the Ministry of Justice.



# INJURY COMMITTEE

Chair HH Graham Jones, Cardiff Civil Justice Centre

Secretariat support Kitty Doherty

Intern support Angela Goldstrom, Nicholas Kazaz

Member	Title	Organisation
Helen Buzcynsky	Legal Officer	Unison
John Henthorn	District Judge	Liverpool Combined Court
Jon Ramsey	Technical Claims Manager	Direct Line
Annette Morris	Lecturer	Cardiff Law School
Christopher Purchas QC	Barrister	Crown Office Chambers
Richard Roberts	Master	RCJ
Janet Tilley	National Managing Partner	Colemans-CTTS Solicitors
Andrew Underwood	Partner	Keoghs LLP
Kevin Westall	Head of Debt and Housing Branch	Ministry of Justice

The terms of reference of the Injury Committee are:

- To consider and monitor current problems and proposals in the law and practice of personal injury claims;
- To make comments and proposals to the Council on the law and practice of personal injury claims that are focused practical and deliverable; and
- To contribute the personal injury perspective to the Vision of Civil Justice Programme, including evaluation of the Civil Procedure reforms, and developing proposals for improvements to access to justice (as part of the programme).

The Injury Committee has so far devoted much of its attention to the question of accommodation expenses. In its recent Law on Damages consultation exercise, the Ministry of Justice sought views on possible alternatives to the method established by the courts in *Roberts v. Johnstone* in relation to the treatment of damages for the purchase of new accommodation for the claimant or the cost of alterations to their existing property. The consultation responses varied in their suggestions regarding possible alterations and given the technical and complex nature of this issue, the Ministry of Justice decided to refer this question to the Injury Committee for consideration.

Relevant consultation responses were passed onto the Injury Committee and this issue was considered over a series of meetings. Committee members have produced recommendations on accommodation expenses for submission to the next Council meeting on 26 November 2010.

The Injury Committee have also contributed to the recent consultation exercise on costs of care, which was conducted by the CJC. The CJC developed guidance to assist in the preparation and presentation of claims for the past and future care of injured claimants in personal injury and clinical negligence claims. This guidance is intended to: encourage the provision of more information on the claimant's likely care needs to both parties at an earlier stage than is commonly the case; encourage solicitors to use similar instruction letters to care reports; recommend a template for care reports; and to give particular guidance on the preparation of claims for past care.

# PROPERTY COMMITTEE

Chair	District Judge Robert Jordan, Leeds Combined Court Centre
Secretariat support	Graham Hutchens
Intern support	Christy Burzio, Suet Lyn Tang

Member	Title	Organisation
Vicki Bailey	Lawyer, Housing and Land Division	Department for Communities and Local Government
Samantha Barnett (September 2009- September 2010)	Senior Policy Adviser	Council of Mortgage Lenders
Jennifer Bourne (October 2010 -)	Senior Policy Adviser	Council of Mortgage Lenders
David Carter	Barrister	Arden Chambers
John Gallagher	Principal Solicitor	Shelter
Caroline Hunter	Professor	University of York
Phil Kelly	Head of Debt and Housing Branch	Ministry of Justice
Nic Madge	Circuit Judge	Harrow Crown Court
Derek McConnell	Director/Solicitor	South West Law Solicitors
David Watkinson	Barrister	Garden Court Chambers

The terms of reference of the Property Committee are:

- 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; and
- to contribute the housing perspective to the Vision of Civil Justice Programme, including evaluation of the Civil Procedure reforms, and developing proposals for improvements to access to justice (as part of the programme).

Listed below are the main areas of work that the Property Committee is taking forward:

## 1. Rent Arrears Pre-Action Protocol

A checklist for compliance with the Rent Arrears Pre-Action Protocol following the successful introduction on 1 October 2009 of a checklist for mortgage arrears cases.

## 2. Mortgage cases

### a. Judicial guidance

The Committee considered the question of guidance for judges in mortgage cases.

### b. Quality of representation in mortgage cases

District Judge Robert Jordan prepared a paper outlining concerns regarding the use of agents in mortgage cases.

**c. Monitoring the Mortgage Arrears Pre-Action Protocol**

The Committee is attempting to take forward a collaborative approach towards evaluation of the protocol. Members are formulating a response to proposed amendments of it by the Ministry of Justice. The Committee is also keeping under review the operation of the Mortgage Rescue Scheme.

**d. Listing**

Committee members considered the listing of possession cases.

The Committee welcomed Lord Justice Jackson's report and, in particular, its recommendation to review the rental possession law and the consideration of acceptance of the Law Commission paper. It also discussed the possible development of a Dilapidations Pre-Action Protocol. In addition to this, the Committee responded to consultation exercises proposing amendments to CPR Parts 52 and 54 and another by the Ministry of Justice entitled, Mortgages: power of sale and residential property.

## BUSINESS OVERSIGHT GROUP

**Chair** Peter Smith, Managing Director for Legal Expenses Insurance and Head of ATE, FirstAssist

**Secretariat support** Kitty Doherty

**Intern support** Cheng Leong Tan, Goksu Kalkan

Member	Title	Organisation
Duncan Campbell	Legal Adviser	Confederation of British Industry
Michael Clarke	Partner	Clarke Willmott LLP
Stephen Gerlis	District Judge	Barnet County Court
Hardeep Nahal	Partner,	Arden Chambers
Alison Padfield	Barrister	Devereux Chambers
Rosina Robson	Senior Policy Adviser	Federation of Small Businesses
Kevin Westall	Head of Civil Policy and Customer Intelligence Branch	Ministry of Justice
Anonymous representative		Office of Fair Trading

The constituencies that must be represented on the Council are set out in statute (section 6(1) of the Civil Procedure Act 1997). Besides an obligation to represent, inter alia, members of the judiciary, legal professions, and lay advice sector, the Council must also include members who are able to represent the interests of particular kinds of litigants (for example, businesses or employees). This statutory obligation has been partially responsible for the successful recruitment of business-related stakeholders (notably from the insurance industry), and the subsequent development of a work programme which incorporates a user focus from the perspective of commerce as well as individuals.

In recent years, the CJC has incorporated a business outlook into various aspects of its work as evidenced by:

- a paper it submitted to the Costs of Civil Litigation Review on third party funding;
- its work on e-justice and e-disclosure;
- its international comparative study which considered judicial specialisation in complex cases;
- the input of the Confederation of British Industry into its work on collective redress;
- a forecasted event on access to justice for small and medium enterprises (“SMEs”) in April 2010.

Following the Spencer Review, the CJC decided to formally integrate this commercial focus into its structure by establishing the Business Oversight Group.

The Group has considered issues arising from the Jackson Report, the proposed ADR handbook, and IT in the courts, as well as its draft terms of reference. It has identified the question of the perceived gap in access to justice as the key issue facing businesses. The Group is to reflect upon the best way of engaging business users and its possible role in consumer issues. The Chair has committed to engage with the Chairs of the Funding and Costs Committee and the Consumer Committee to ensure activities are coordinated.

# EU COMPARATIVE LAW OVERSIGHT GROUP

<b>Chair</b>	<b>Professor Rachael Mulheron, University of London (Queen Mary's)</b>
<b>Secretariat support</b>	<b>Graham Hutchens</b>
<b>Intern support</b>	<b>Vacant</b>

<b>Member</b>	<b>Title</b>	<b>Organisation</b>
<b>Paul Ahearn</b>	<b>Head of International Civil Law</b>	<b>Ministry of Justice</b>
<b>Julia Bateman</b>	<b>Head</b>	<b>Joint Brussels Office of the Law Societies</b>
<b>Faria Medjouba</b>	<b>Research Fellow</b>	<b>British Institute of International and Comparative Law</b>
<b>Linda Jackson</b>	<b>Senior Legal Adviser, Company Affairs Group</b>	<b>Confederation of British Industry</b>
<b>HH Graham Jones</b>	<b>Judge</b>	<b>Cardiff Civil Justice Centre</b>
<b>Eral Knight</b>	<b>Head of the Civil Justice Team, International Directorate</b>	<b>Ministry of Justice</b>
<b>John Sorabji</b>	<b>Legal Secretary to the Master of the Rolls</b>	<b>Judicial Office</b>
<b>Monty Trent</b>	<b>District Judge</b>	<b>Mayor's and City of London Court</b>

The CJC has long recognised the value of looking to the experience of other jurisdictions in undertaking its statutory functions of monitoring the domestic civil justice system and making recommendations for its reform to ministers. Lessons learned from other countries have informed perspectives adopted by the CJC on topics as diverse as costs and funding through to public legal education and ADR. To take a couple of recent examples, the CJC examined the use of class actions in Europe, Australia and North America before recommending to government the introduction of an improved system of collective redress. As part of its Vision for Civil Justice project, a three-year review of the civil justice system, the CJC undertook in early 2009 an international and comparative study tour surveying the legal systems of Hong Kong, Australia and Canada.

The CJC has employed a range of methods in maintaining its international perspective towards civil justice. Members of its committees etc have taken a strategic approach to this by monitoring overseas jurisdictions, comparing differences of approach and considering the lessons to be learned from abroad. Committees have also taken a more reactive approach to their comparative work by, for example, responding to European consultation proposals and the implications that these may have for England and Wales.

Over the years, the CJC has also developed an extensive network of international contacts and partners. It has, for example, partnered with Tilberg University (Netherlands) and the Dutch Ministry of Justice on judicial case management. In the field of collective redress, the CJC has established strong connections in Brussels with, *inter alia*, representatives of the Directorate Generals for Competition and Health & Consumers; the European Economic and Social Committee; and BEUC (the European Consumers' Organisation). The CJC also undertakes biannual comparative study tours of Commonwealth jurisdictions.

It was out of a perceived need to formally integrate an international dimension into the structure of the CJC that the Comparative Law Committee was established. This committee was set up in 2008 under the chairmanship of HH Graham Jones and it met on two occasions to discuss various topics of comparative and international significance including collective redress; the ADR directive; and a green paper on the effective enforcement of judgments in the European Union.

This Committee then continued in the same role under the chairmanship of Professor Rachael Mulheron, and a further meeting was held to develop a plan of proposed projects. In light of the views of both current and former Chairs, an evaluation of this Committee then took place, the outcome of which was that it would operate best as an oversight group, given the existing comparative focus of other committees, the often very technical nature of some of the projects which concern aspects of EU law, and the limited areas for discussion beyond already-existing committees.

The EU Comparative Law Oversight Group considered potential issues that could be amalgamated into the work programme of the CJC. Such issues comprised:

- Input into the review of Brussels I, as and where feasible and appropriate;
- The development of a chart outlining procedural differences across the EU jurisdictions, concentrating upon disclosure, expert witnesses and how litigants give evidence in civil matters;
- Proposals for training judicial members (if desired), and the possibility of using European funding for this;
- A study of the European Enforcement Order, and the development of possible training programmes in order to assist the JSB and future training needs of District Court Judges; and
- The continuing review of collective redress reform and implementation.

# EXPERTS OVERSIGHT GROUP

**Chair** John Pickering, National Managing Partner, Irwin Mitchell

**Secretariat support** Kitty Doherty

**Intern support** Vacant

Member	Title	Organisation
Michael Cohen	Chairman Emeritus	Academy of Experts
John Cowan	Consultant	Geoffrey Hunt & Partners
Mark Harvey	Partner	Hugh James
John Henthorn	District Judge	Liverpool Combined Court
Robin Oppenheim QC	Barrister	Doughty Street Chambers
Graham Plumb	Claims Technical Manager, Large Loss	AXA
Margaret McDonald/ Jackie Hartley		Ministry of Justice

The Experts Oversight Group has its roots in the Experts Committee, which was established in 2003. Following adjustments to its membership after the Spencer Review, the Experts Oversight Group held its first meeting on 17 December 2009.

The Oversight Group has discussed its potential involvement in the review of Part 35 and the shortage of experts. Members have decided to monitor and keep under review Part 35. The Group is to consider proposed revisions to Part 35 when it is reviewed in December 2010.

Members have also agreed that further investigation should be conducted on the shortage of experts and contact has been made with the BMA Legal Medical Committee in this regard.

The Oversight Group also considered its potential involvement in the integrity of experts' reports; e-disclosure; and the capping of experts' fees. It has also discussed case management control, as well as legal aid and the MoJ's launch of a new project to review current fee arrangements and deliver new fee structures for professional expert witnesses.

# PRE-ACTION PROTOCOL OVERSIGHT GROUP

**Chair** Mark Harvey, Partner, Hugh James

**Secretariat support** Kitty Doherty

**Intern support** Vacant

Member	Title	Organisation
Ivor Collett	Barrister	1 Chancery Lane
Martin Heskins	Policy Adviser: Civil Litigation, Law Reform & Legal Policy	Law Society
Robert Jordan	District Judge	Leeds Combined Court Centre
Qasim Nawaz	Member	Civil Procedure Rules Committee
Tony North	District Judge	Cardiff County Court
Kevin Westall	Head of Debt and Housing Branch	Ministry of Justice

The Pre-Action Protocol Oversight Group is a continuation of the Pre-Action Protocol Committee which was set up in 2007. This body was tasked by the Master of the Rolls with the review of pre-action protocols.

Over the course of 2009 and early 2010, the Group led a widespread and fundamental review of the protocols in conjunction with the Law Society. Protocols were reviewed both in terms of ensuring that they remain contemporary, relevant and proportionate. Consideration was also given to the Practice Direction on Pre-action Conduct to see if the protocols could benefit from its structure, language and intent.

The review led to a CJC-hosted forum in March 2010 to which stakeholders were invited. This forum considered the reviews' recommendations and proposed drafts of revised protocols; Lord Justice Jackson's views on pre-action protocols and the general practice direction; as well as the development of pre-action protocols relating to dilapidations and mesothelioma. The results of that review have now produced a set of revised and updated draft protocols which it is intended to place before the Council in November 2010.

In addition to this, the Oversight Group has considered an update on the mortgage arrears pre-action protocol and the Financial Services Authority consultation on changes to Mortgage Conduct of Business Rules. It is also submitting to the Civil Procedure Rule Committee a draft protocol in relation to dilapidations claims for consideration at its meeting in November 2010.



## FEES CONSULTATIVE PANEL

<b>Chair</b>	<b>John Usher, Legal Consultant, Usdaw</b>	
<b>Secretariat</b>	<b>Graham Hutchens</b>	
<b>Intern support</b>	<b>Vacant</b>	
<b>Member</b>	<b>Title</b>	<b>Organisation</b>
Lola Bello	Senior Policy Advocate	Consumer Focus
Phil Bowden	Costs Lawyer and Senior Partner	Masters Legal Costs Services
Carlos Dabezies	District Judge	Willesden County Court
Adrian Jaggard	Director	Jaggards Legal Costs Consultants
Cara Mitchell-Langford	Head of Civil and Family Fees Branch Civil Law & Justice Division, Access to Justice Policy Directorate	Ministry of Justice
Dr Jane Phipps	Debt Specialist Support Officer	Citizens' Advice

The Fees Consultative Panel evolved from the Fees Sub-Committee which was established in 1998. Before 2003, the Fees Consultative Panel responded to fees-related consultations as an ordinary consultee. However, with the advent of the Courts Act 2003, the Lord Chancellor is now required to consult the Civil Justice Council before making fees orders in relation to civil proceedings (see section 92(6)).

Besides fulfilling its statutory function as consultee, the Fees Consultative Panel provides advice on fees-related issues (e.g. the exemption and remission of fees and full cost recovery).

The Fees Consultative Panel has considered the recent Ministry of Justice consultation and responses on civil court fees; and exchanged views with the Ministry of Justice on its fees strategy, relationship to the panel and future plans. It has considered:

- how to make an effective contribution to the work of the MoJ (without abandoning its principled position against full costs recovery);
- the possibility of working in conjunction with the Family Justice Council and Administrative Justice & Tribunals Council; and
- future involvement in responding to proposed changes to the fees remission system.

Panel members recently met with Ministry of Justice officials to discuss the possibility of the CJC being “pre-consulted” on fees-related consultations as well as forthcoming developments in fees and the potential for CJC involvement. There has been a positive response from the Ministry of Justice and this has been followed by increased communication in relation to developments. The Panel was advised in August that the remission system will be reviewed as part of the fundamental look at the legal aid system.

## Interns

In 2009, the Civil Justice Council introduced an internship programme to support its network of committees and oversight groups. This programme provides junior lawyers and law students with a practical insight into civil justice policy, enabling links to be forged with leading professionals in the field. In return, interns provide the CJC with valued legal research and drafting assistance.

Interns are assigned to discrete committees and working groups and often work in pairs liaising directly with their chairs to provide assistance with ad hoc legal research and drafting projects as well as meeting support (e.g. minute writing, reporting to members on projects undertaken).

Interns are required to have a demonstrated interest in civil justice and a record of academic achievement. They are also expected to have completed academic legal training and to have embarked upon or completed vocational law courses i.e. the Bar Professional Training Course or Legal Practice Course.

The duration of internships is generally one year and interns commit approximately 5 hours per week to CJC-related work. Work is done in interns' own time, but they also make themselves available for regular daytime committee meetings and meetings with the committee chairs.

Although recruitment takes place on an annual basis, the CJC accepts applications throughout the year. Initially, interns were recruited through BPP Law School. However, this year the CJC also recruited interns through iProBono; an online network connecting prospective interns with internship providers ([www.i-probono.com](http://www.i-probono.com)). Now that the internship programme has bedded down, the CJC intends to recruit more widely in the future.

The CJC would like to take this opportunity to thank its interns – both past and present – for their hard work. Thanks are also due to Shireen Irani of iProBono and Kara Irwin, formerly of BPP Law School, for their valued help in recruiting interns.

### **Biographies of our interns past and present.**

**Padideh Dolatshahi** graduated from King's College London in 2007 and undertook the BVC on a part time basis between 2007 –2009. She is currently working in the legal department of the Royal College of Nursing, defending members who face allegations before the Nursing & Midwifery Council and the Independent Safeguarding Authority and advising members with regards to their claims to the Criminal Injuries Compensation Authority. She has a particular interest in the uses of ADR across different types of disputes and looking forward to working closely with the Dispute Resolution Committee in reaching their goals.

**Elizabeth Gardiner** is Head of Policy for campaigning charity Working Families. Elizabeth has previously worked in both Houses of Parliament and for a trade union. She combined her part time work with Working Families with part time training and has completed the GDL and LPC, gaining a distinction in both. She is now training to be an adviser with Citizens Advice.

**Kathryn Hunt** holds an undergraduate degree from University College London where she studied LLB Law and Australian law. As part of her degree she spent her third year studying at the University of New South Wales, Sydney, which added an international dimension to the research she carried out. Kathryn completed the Bar Vocational Course, and has since worked in employed legal practice. She recently moved to Edinburgh to complete an LLM in Commercial Law.

**Michael McErlaine** graduated from Trinity College, Dublin in 2008 having read Law. Michael was also Managing Editor of the Trinity College Law Review in 2007-08. Sometime after graduating, he moved to London where he is now a trainee solicitor at leading City law firm Herbert Smith LLP.

**Christy Burzio** graduated from the University of Leicester with an honours degree in law. In 2009 Christy went on to study the BPTC at BPP Holborn and was then Called to the Bar in July 2010 (Lincoln's Inn). She is currently studying for her Commercial LLM at King's College London. Whilst studying Christy also dedicates her time to the charity Amicus as a caseworker and has published two state aid research briefs and has worked on various cases to date.

**Angel Goldstrom** is an intern at the Injury Committee. She completed her law degree at Bristol University and is currently studying the Legal Practice Course. She has been a student adviser for both the Bristol Law Clinic and Community Legal Advice and Representation Service. She was involved in University of Bristol Innocence Project through casework and fund raising activities. Apart from being a law student, she is also a Registered Nurse working in cardiac surgery.

**Goksu Kalkan** is an intern at the Civil Justice Council and providing support to Business Oversight Group and Costs & Funding Committee. She was born in Cyprus where she lived until she left for Istanbul, Turkey to pursue university education. She studied Political Science and International Relations at Bogazici University. After graduating from university she completed Graduate Diploma in Law and Legal Practice Course, and also obtained an LLB degree from BPP Law School, London. She is currently a Master of Laws (LLM) student at University College London.

**Nicholas Kazaz** is an intern at the Civil Justice Council. Nicholas read for his first degree at the University of Oxford, and went on to study for the Post Graduate Diploma in Law at City University, London in 2007 – 2008. He was called to the Bar in 2009 (Jules Thorn Scholar, Middle Temple), following which he worked for the then Shadow Secretary of State for Justice, Dominic Grieve QC MP. Presently Nicholas is studying for a LL.M. at King's College London.

**Jenni Simpson** studied both English and French law at Kings College London and Université de Paris 1: Panthéon-Sorbonne. She spent a year as an Adjudicator for the Financial Ombudsman Service and is currently working for the General Medical Council's in-house legal team prior to commencing her training contract with Ashfords LLP in September 2011.

**Aneeka Alam** is currently doing the first year of her training contract in the in-house legal department of Tenant Services Authority, the regulator for social housing in England. She has worked in an employment and discrimination law firm, a city law firm and has undertaken some NHS defence work. She has also volunteered in several organisations including the City Citizens Advice Bureau, BPP legal advice clinic and the Lesbian, Gay and Transgender Asylum Seeker Team.

**Anika Amlani** recently completed the Legal Practice Course at Kaplan Law School and is currently working at Freshfields Bruckhaus Deringer. She also holds a Hon.B.A. in International Development and Politics from the University of Toronto. She previously interned at the International Bar Association's Human Rights Institute, volunteered with Amnesty International and worked as a project consultant with Aga Khan Rural Support Programme doing field work in Northern Pakistan.

**Cheng Leong** read law at the University of Reading where he graduated with a LLB (Hons) degree. He studied for his professional qualification at BPP Law School. He is a member of Lincoln's Inn and was called to the Bar of England & Wales in July 2010. He is currently in Malaysia chambering with a local law firm and hopes to establish a career in corporate litigation.

**Suet Lyn Tang** Originally from Kuala Lumpur, Lyn spent the last academic year undertaking the L.L.M in Commercial Law course at BPP Law School. In 2007, Lyn moved to London to broaden her horizons. Between working, exploring the UK and travelling in Europe, Lyn took the Qualified Lawyers Transfer Test and was admitted to the Roll of Solicitors of England and Wales in September 2008. Currently, Lyn divides her time between work experience at a legal aid solicitors' firm and her internship with CJC and she hopes to practice in Social Welfare law in the near future.

## Events

### **Facilitative meetings: fixing costs in the fast track – autumn 2009**

During autumn 2009, the Civil Justice Council held a series of five facilitative meetings between claimant and defendant representatives in relation to personal injury claims, and between landlord and tenant representatives in relation to housing disrepair claims.

The aim of these meetings was to fix costs in the fast track for cases relating to road traffic accidents, employers' liability (accident and disease), public liability and housing disrepair.

Although it was not possible for the parties to reach agreement on fixed costs in the fast track, the contributions made at the facilitation meetings gave Lord Justice Jackson considerable assistance in reaching his conclusions on this subject.

### **Third Party Funding event – 25-26 February 2010**

In its 2007 report, *Improved Access to Justice, Funding Options and Proportionate Costs*, the Civil Justice Council recommended properly regulated third party funding as an acceptable option for mainstream litigation. This recommendation was followed by series of stakeholder events looking at regulatory options for commercial litigation funders.

At the first stakeholder event in February 2008, delegates considered the desirability and potential form of regulation of third party funding. Although general support emerged for a light handed approach, self-regulation was not favoured.

Following the event, the CJC established a working group to prepare practical regulatory proposals. Following some initial preparatory work by the working group, a further major stakeholder event took place in July 2008 to discuss a draft voluntary code. The overall outcome of the event was an indication of support for the voluntary code in further amended form.

Lord Justice Jackson later considered third party funding in the context of his review into the costs of civil litigation. In light of the observations Lord Justice Jackson made in his final report, the draft Code was revised with respect to its provisions regarding capital adequacy, termination, and adverse costs.

On 25-26 February 2010, a final stakeholder consultation event was held to discuss a further draft of the Code of Conduct in the context of Lord Justice Jackson's findings, and to discuss the formation of an Association to promote and oversee self regulation.

Following the event, the Code of Conduct was revised into its final form, and five major funders agreed to take forward the establishment of an Association. A draft Constitution was prepared, and these documents formed the basis of a consultation exercise which opened on 23 July 2010 and closed on 3 September 2010.

### **Costs Forum – 10-12 March 2010**

The Civil Justice Council held a costs forum, which was devoted exclusively to Lord Justice Jackson's Review of Civil Litigation Costs.

On 14 January 2010, Lord Justice Jackson published one of the most detailed and penetrating examinations of litigation costs in the long history of civil law. His recommendations were wide ranging and included proposed extensions to the fast track; fixed costs; one way costs shifting in injury claims and beyond; the non recoverability of Success Fees and ATE premiums; more funding options such as third party funding and contingency fees; the development of judicial dockets; improved case management by the judiciary; the development of costs management as part of case management; disclosure menus; and the proposed introduction of a Costs Council.

This event provided an opportunity for stakeholders to debate their reaction to the Jackson Report in a wider forum, and to identify the key issues for immediate consideration by those who will be taking forward the development of rules and legislation.

### **Judicial case and costs management event – 19-20 March 2010**

On 19-20 March 2010, a representative range of the judiciary met to discuss Lord Justice Jackson's proposals on judicial case management and costs management. Discussions were constructive with examples being provided of good case management techniques, and also how judicial skills might be developed to take forward Lord Justice Jackson's recommendations. Discussions also took place around the issue of resourcing the judiciary to accommodate these proposals.

### **Pre-Action Protocol Forum – 23-24 March 2010**

The policy principles underlying pre-action protocols originated from the Government's civil justice reforms. Those principles have not changed. They were re-emphasised and supported in the Costs of Civil Litigation Report. The emphasis remains:

- to enable the parties to settle the claim before litigation is begun, by encouraging them to exchange sufficient information to enable them to understand the issues in dispute and to consider ADR; and
- to support the efficient management where litigation cannot be avoided

In conjunction with Her Majesty's Courts Service, the CJC invited all stakeholders involved with the existing ten subject-specific pre-action protocols to work with the Law Society in conducting a review of their protocols to identify ways in which they could be modernised, made more cost efficient and, where appropriate, improved. Lord Justice Jackson also reported on both the subject specific protocols and the more recent Practice Direction on Pre-Action Protocols in his Costs of Civil Litigation Report.

The CJC and the Law Society held a forum to consider both the reviews and Lord Justice Jackson's recommendations and to identify what amendments, if any, would be necessary to the Protocols and Practice Direction and to consider requests for any new Protocols. Attendees at this event were mainly practitioners and members of the various pre-action protocol review groups, although the advice sector and judiciary were also represented.

## Research and Pilot Project

### Perceptions of claiming

The Civil Justice Council commissioned research by Cardiff University into the social influences underlying perceptions of personal injury claims. This research comprised a small study of 56 law students based on a controlled evaluation of their attitude to specific personal injury scenarios. These attitudes were compared with their general views on the compensation system.

### Regulation of legal services

The Review of Civil Litigation Costs undertaken by Lord Justice Jackson has placed the costs of civil litigation at the forefront of the policy agenda. As Lord Justice Jackson stated in the preface to his Report:

“In some areas of civil litigation costs are disproportionate and impede access to justice. I therefore propose a coherent package of interlocking reforms, designed to control costs and promote access to justice”.

Thus, the need for regulation of costs in the legal services market, the evidence base on which any regulation will take place, and the mechanics that are proposed, must all receive serious scrutiny.

Professor Paul Fenn (of Nottingham University) was commissioned by the CJC to provide research into this area. His report makes a case for theoretical and empirical research on these issues, drawing on sources in other areas of regulation and incentives, as well as through collection and analysis of original data.

### JudgEd

The Civil Justice Council in conjunction with the Citizenship Foundation, has worked on a pilot to develop resources for a public legal education programme to be delivered in schools by judges. The pilot will involve delivery by six judges of up to three educational workshops with students (aged 14-16) from up to four schools in Leeds, followed by a tour of the local court. The educational toolkit and units have been produced, a group of six judges have been trained and workshop sessions with schools are now being arranged.



## Consultation exercises

### Costs of Care

The costs of caring for a child with cerebral palsy or a catastrophically injured young adult are very often the largest part of a serious personal injury or clinical negligence claim. Considerable progress has been made in streamlining expert evidence since the Civil Procedure Rules were implemented in 1999, including in catastrophic personal injury claims. But the costs of care continues to be a very contentious aspect of many such claims, and there is limited guidance in the rules or case law on when and how care experts should be instructed, on the most helpful format for their reports and on the factors judges should take into account in deciding these claims. Care reports for the parties are often prepared from different information and presumptions, and using different timescales and rates for the costs of care. This makes comparison difficult and can hinder settlement or incur additional costs at trial.

The costs of care are frequently an important part of lower value claims also, when the care has usually been provided by family members, and where it is usually not proportionate to obtain reports from care experts. Parties and judges will appreciate guidance here too, particularly on appropriate hourly rates for the care claimed.

The Civil Justice Council worked on providing better and more clearly defined guidance in this area with the Ministry of Justice and other key stakeholders. Its work in this field has resulted in draft guidance comprising:

- A Best Practice Guidance Note;
- A Care information Schedule to help parties and the court to decide at an early stage how to progress the care claim;
- A draft letter for the instruction of a care expert; and
- A template for a care expert's report.

The Guidance was consulted upon from 10 December 2009 until 8 March 2010. It is not intended to be a commentary on the current law but if adopted will need to be reviewed from time to time in the light of changes in the law.

The Civil Justice Council received 22 respondents from a wide range of stakeholders. A summary of consultation responses was completed on 2 June 2010.

### Third Party Funding consultation

In its 2007 report, *Improved Access to Justice, Funding Options and Proportionate Costs*, the Civil Justice Council recommended properly regulated third party funding as an acceptable option for mainstream litigation. This recommendation was followed by series of stakeholder events looking at regulatory options for commercial litigation funders.

At the first stakeholder event in February 2008, delegates considered the desirability and potential form of regulation of third party funding. Although general support emerged for a light handed approach, self-regulation was not favoured.



Following the event, the CJC established a working group to prepare practical regulatory proposals. Following some initial preparatory work by the working group, a further major stakeholder event took place in July 2008 to discuss a draft voluntary code. The overall outcome of the event was an indication of support for the voluntary code in further amended form.

Lord Justice Jackson subsequently considered third party funding in the context of his review into the costs of civil litigation. In light of the observations that he made in his final report, the draft Code was revised with respect to its provisions regarding capital adequacy, termination, and adverse costs.

On 25-26 February 2010, a final stakeholder consultation event was held to discuss a further draft of the Code of Conduct in the context of Lord Justice Jackson's findings, and to discuss the formation of an Association to promote and oversee self regulation.

Following the event, the Code of Conduct was revised into its final form, and five major funders agreed to take forward the establishment of an Association. A draft Constitution was prepared, and these documents formed the basis of a consultation exercise which opened on 23 July 2010 and closed on 3 September 2010.

20 responses were received by the Civil Justice Council. Interns, Cheng Leong Tan and Goksu Kalkan, summarised these responses. A formal summary is to be drafted by the CJC. This will then go before the Executive Committee along with the draft code which was consulted upon.

## Other areas of activity

### Collective actions

In November 2008, the Civil Justice Council published its final report entitled *“Improving Access to Justice through Collective Actions – Developing a more Efficient and Effective Procedure for Collective Actions”*.

The report was a culmination of more than two and a half years of extensive stakeholder consultation, and consideration by eight government bodies within the jurisdiction of England and Wales, and more widely in the European Union.

The report contained wide-ranging recommendations aimed at improving access to justice for citizens wishing to bring collective claims. The Council found that:

- Existing procedure did not provide sufficient or effective access to justice for a wide range of citizens.
- Existing collective actions were effective in part, but could be improved considerably to promote better enforcement of citizens’ rights.
- There was overwhelming evidence that meritorious claims, which could be brought are currently not being pursued.
- There were meritorious claims that could fairly be brought with greater efficiency and effectiveness on a collective rather than unitary basis.
- Effective collective actions promote competition and market efficiency, consistent with the Government’s economic principles and objectives.
- Collective claims could benefit defendants in resolving disputes more economically and efficiently.
- The Court was the most appropriate body to ensure that any new collective procedure is fairly balanced as between claimants and defendants.
- The proposed new collective procedure should apply to all civil claims which effect multiple claimants.
- There should be no presumption as to whether collective claims should be brought on an opt-in or opt-out basis.
- The majority of the proposed procedural reforms could be introduced by Rules of Court.

In July 2009, The Government issued its response to our report. It felt that:

- A generic right of collective action should not be introduced. Such rights should be considered, and where appropriate introduced, in respect of specific ‘sectors’.
- Rights of action should be introduced only where there is evidence of need and following an assessment of economic and other impacts and consideration of alternative approaches. In particular, regulatory options should be considered before introducing court based options.

- The distinction between opt-in and opt-out models for collective actions is not as clear cut as it should be. They are to some extent part of a continuum. There are several options depending on the stage of proceedings at which the class is closed. Some of these may combine the features and benefits of both models.
- The issue of who may bring collective actions is best determined sector by sector. Different criteria and methods of authorisation may apply (including authorisation by the court on a case by case basis).
- The existence of effective ADR mechanisms in any collective action procedure will be crucial. So too will strong case management by the court, including merits and cost-benefit criteria.
- The ‘loser pays’ principle for costs should be maintained to help deter unmeritorious litigation.

Following the publication of its response, the Civil Justice Council and Ministry of Justice formed the Collective Action Rule Drafting Group to develop flexible generic procedural rules within which any collective action scheme can operate. A draft will be completed by the end of the year.

The CJC’s recommendations were almost all included in the Financial Services Bill 2009, but removed shortly before its passage through Parliament.

### **Predictable damages**

The Ministry of Justice invited the Civil Justice Council to consider developing predictable damages following its claims process consultation paper. The Civil Justice Council, with the agreement of the Ministry of Justice, reduced its focus on predictable damages until completion of claims process. The issue of predictable damages was later addressed by Lord Justice Jackson in his review. He established a working group with the aid of a mediator to discuss a possible model for predictable damages (now termed calibrated damages) based on calibration of existing industry software.

The Civil Justice Council has discussed with the Motor Accident Solicitors’ Society, Association of Personal Injury Lawyers and Motor Insurers’ Bureau a review of the utility of existing software damages assessment tools and the possibility of a pilot based on industry software calibrated by agreed claimant law firms. Specific considerations might include: whether ranges of damages or specific figures provide the best access to justice for claimants; whether existing software provides a genuinely independent and sufficiently accurate platform for calculating damages; what form, source and content of data should be used to calibrate the damages assessment tool; whether there should be an opt-out clause for claimants linked to penalties for failing to beat an assessed figure (and by what margin); and how any genuinely exceptional and inappropriate cases might be identified and excluded from the pilot.

### **Compensation in pharmaceutical cases**

The Civil Justice Council explored whether a no-fault system of compensation ought to be introduced for people who suffer serious harm or death from drug products.

It is argued that funding and costs issues deter claims against pharmaceutical companies after serious harm or death is suffered from drug products. It is also said that litigation is not conducive to encouraging risk management of medicines because of the emphasis it places upon individual harm rather than upon minimising and/or eliminating the surrounding causative factors for the harm.

The Civil Justice Council discussed with stakeholders the creation of no-fault compensation to tackle these problems, as well as the possible mechanics of any such compensation scheme.

### **Judicial Early Neutral Evaluation**

The Civil Justice Council has held discussions with local judiciary in Cardiff about the possibility of a judicial early neutral evaluation pilot.

### **ADR Handbook**

In his final report following the review of the costs of civil litigation, Lord Justice Jackson identified the need for a single authoritative handbook explaining clearly and concisely what ADR is and giving details of all reputable providers of mediation. In his report, he added that because of the competing interests in play, it would be helpful if an ADR handbook were published by a neutral body. He recommended that this should be done under the aegis of the Civil Justice Council. The CJC has been holding a series of meetings with key stakeholders to discuss the possible creation of such a handbook.

### **Measuring access to justice**

The Civil Justice Council has met representatives of the European Commission for the Efficiency of Justice, the Ministry of Justice, the Canadian Forum for Civil Justice, and Tilberg University to learn more about access to justice benchmarking and about the wider costs of using the civil justice system.

## 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 then Lord Chancellor's Department, and also the Civil Justice Reform Research and Evaluation Programme Manager.

**Chloë Smythe** is Deputy Chief Executive of the Civil Justice Council. She was one of three students selected for entry to the University of Leicester LL.B International Law programme which involved a third year of study at the National University of Singapore. Chloë was Called to the Bar in 2003 (Queen Mother Scholar, Middle Temple). In 2006, she graduated from the LL.M programme at the University of Toronto (Commonwealth Scholar). Over the past ten years, Chloë has combined work in civil justice with involvement in human rights projects in Malawi, Sierra Leone, Toronto and London.

**Kitty Doherty** is the Events and Compliance Manager for the Council. She joined the Civil Justice Council in October 2006. Kitty is responsible for finding venues for conferences and organising events for the council. She also coordinates recruitment of new members to the Council, and the Council's Annual Report. She also manages a number of Civil Justice Council committees namely the Dispute Resolution, Injury, and Experts committees. She previously worked in the Civil Appeals Office and the Family Division. Kitty is currently undertaking a degree course in Criminology.

**Graham Hutchens** is the Systems and Finance Manager. He previously worked in the Judicial Appointments Commission and joined the Civil Justice Council in February 2007. He has over thirty years of experience working for the Ministry of Justice ranging from human resources and finance to project management. He currently manages a number of Civil Justice Council committees and conferences. He is also responsible for finance and systems management.

## 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





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