

## Civil Justice Council | Annual Report 2008-09

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## Foreword

This year is the tenth anniversary of the Civil Justice Council. With age comes maturity, and I think it fair to say that the Council is now a fully effective and mature body. It has grown over the years in both ability and confidence, and has I believe fulfilled Lord Woolf's vision of a 'high powered body representative of all of the relevant interests which monitors the effects of the new rules in practice'.



As with all major anniversaries, there should be reflection, and during 2008 Dr Jonathan Spencer was instructed by the Ministry of Justice to conduct a root and branch review of the Council's capabilities. I am happy to say that Dr Spencer found the Council to be in good health, and his report has helped us considerably with our own thinking about the direction of the Council in future years. In some ways, Dr Spencer has brought us into a third age of development. The first three years of the Council were spent laying down roots. We made helpful contacts and established some of the professional networks that continue to serve us today. The second phase was a coming of age. Lord Woolf's reforms had started to embed themselves, and issues had started to emerge in areas where those reforms had not been effectively delivered. In particular, there were problems surrounding the personal injury process and the funding of claims through conditional fee agreements. In this phase, the Council assisted the Government by mediating "industry agreed" solutions.

The Council's third phase is likely to be one of broad reflection on the genuine utility of the civil justice system, from the perspective of the individual or company that needs its protection. The Civil Justice Council will work closely with Lord Justice Jackson's fundamental review of costs, and will undertake its own review, entitled "A Vision for Civil Justice", considering access to justice from the perspective of those who the system serves.

This is my last Annual Report as Master of the Rolls and Chairman of the Civil Justice Council, and I wish my successor, Lord Neuberger, good fortune in his leadership of the civil justice system. The Civil Justice Council will be present to provide both expertise and support in this demanding role.

**Lord Clarke of Stone-cum-Ebony**

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

## The Primary role of the Civil Justice Council

The Civil Justice Council is a Non Departmental Public Body, sponsored by the Department for Constitutional Affairs. It was established under the Civil Procedure Act 1997 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 task of the Council is to promote the needs of the civil justice and to monitor the system to ensure that progress to modernise it continues. It advises the Lord Chancellor and his officials on how the civil justice system can be improved to provide a better justice system, reviews policy and procedures to ensure they improve access to justice, and monitors system procedures to assess whether they achieve their stated policy aims.

### Statutory provision

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

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

### Constitution

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

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

## Purpose, Visions, Values and Objectives

### Purpose

The Civil Justice Council's purpose is to help make civil justice increasingly accessible, fair and effective, and that the interests of those who may need to use the civil justice system are central to the system.

### Vision

A civil justice system that enables people to have their disputes resolved as quickly, fairly, and efficiently as possible, in a way that is proportionate to their dispute.

That people who have a legal dispute have access to early advice, viable and affordable options to resolve their disputes, the opportunity to exercise informed choice in the way they resolve their disputes.

### Values

The Civil Justice Council works in accordance with the following values:

#### 1. Awareness

The Civil Justice Council will identify priorities for potential reform that take account of changes in society, in expectations of the justice system, informed opinion and/or research, and changes in technologies.

#### 2. Openness

The Civil Justice Council will conduct its business in a visible and open manner.

#### 3. Investigation

The Civil Justice Council will investigate or research examples of good practice at home and overseas.

#### 4. Consultation

The Civil Justice Council will consult with interested parties and give due weight to all submissions.

#### 5. Fairness

The Civil Justice Council will produce reports and recommendations based on careful analysis of all the evidence, and will have regard to the interests of all stakeholders.

#### 6. Partnership

The Civil Justice Council will work where possible in partnership with Government to achieve what is practical, while retaining its independent voice.

## Strategic Objectives

The Civil Justice Council will keep under review and influence the development of civil justice through:

1. providing authoritative and principled advice and guidance to government and the judiciary, and others within the civil justice system on changes to legislation, practices and procedures to improve the working of the civil justice system;
2. exploring and promoting the scope for new approaches to dispute resolution, and public awareness and legal empowerment, in civil law;
3. recognising and responding to the diverse needs and circumstances of users of the civil justice system, by applying effective monitoring arrangements and being alert to emerging issues;
4. responding authoritatively to proposals for changes in legislation, policy and procedure initiated by others; and
5. making proposals to Government for research that are based on informed opinion and the perceived needs of users of the civil justice system.





  
The  
Royal  
Courts  
of  
Justice

## Responding to the Needs of Users

### - A Review of the Civil Justice Council

In 2008, the Ministry of Justice, as sponsor Department for the Civil Justice Council, instructed Dr Jonathan Spencer CB to conduct a fundamental review of the Civil Justice Council's purpose and effectiveness. In his report "Review of the Civil Justice Council, Responding to the Needs of Users" he found:

1. The concept of the Civil Justice Council (CJC) was sound, and had been proved to be so over the last ten years.
2. A significant strength of the CJC was its extensive and diverse practitioner expertise, which meant that its proposals were generally well grounded and practical.
3. Another strength was the neutral environment it provided for contacts between the judiciary and other civil justice stakeholders.
4. Another important strength was the Council's ability to get different interests – including very divergent ones – to sit down together and engage in constructive dialogue.
5. The Council had played an essential mediating role in resolving the 'costs wars' – the satellite litigation spawned by the passage of the legislation on Conditional Fee Arrangements – and subsequently on a range of other issues, mostly connected to costs issues.
6. It had broadened its range in recent years, rightly, but with mixed initial success in terms of influence. This is partly because there has been less close collaboration with the Ministry of Justice than there might have been, and partly because it has not broadened its range of stakeholder interests as much as it might.
7. Communications had for some time been a weak link, both internally with members, and more significantly with external interests.
8. There was now an opportunity to give the Council's work programme a sharper and more strategic focus on the needs of users, rather than what has sometimes been seen to be essentially a compilation of committee chairs' personal enthusiasms, and including a further move away from the historic central focus on personal injury cases.
9. This might necessitate some shift in the balance of the Council's membership towards the 'user' interest.

In the months following the report, the Civil Justice Council conducted a series of internal reviews and external consultations about its purpose, functions, business, structure, and priorities.

The Council accepted the main thrust of Dr Spencer's recommendations, and conducted a major re-structuring of its business and resources in line with the recommendations. The report itself recognised the maturing of the Civil Justice Council, having laid down its roots in its first three years of existence, and then evolved into a body with a high reputation that has addressed on an expert and practical level some of the emerging problems in the civil justice system post civil procedure reform. Dr Spencer's recommendations aim to take the Civil Justice Council to a third age of maturity, which having addressed the initial pinch points of the new civil procedure, should now stand back and "scan the horizon" of the civil justice system (to use Dr Spencer's words), perhaps in a more philosophical way, and certainly shifting the emphasis of its interventions from legal and judicial solutions, to a more consumer and citizen based focus.

The Spencer report anticipated the Council covering more ground, undertaking a wider range of work, providing better skilled legal and policy support to its members and committees, and developing new communications strategies. Dr Spencer also recognised that such expansion has an inevitable resource implication.

Since the report was written, the prevailing economic climate has changed, and it is recognised that public sector resources across Whitehall will need to be reduced. The Civil Justice Council has no anticipation of significant additional resources from Government, indeed in real terms has seen no increase in its non-staff operational running costs for the past seven years, so a considerable challenge for the Council will be how to give effect to Dr Spencer's recommendations.

## Working Methods of the Civil Justice Council

The Civil Justice Council comprises of a full Council of twenty five members. An Executive Committee of; the Chair, Deputy Head of Civil Justice, three Council members, and the Chief Executive make the management and planning decisions. Five committees and seven Oversight Groups undertake the Council's day-to-day activities. The Committees are: Injury, Property, consumer, Dispute Resolution, and Funding. The Oversight Groups are: Pre Action, Experts, Court Services, EU Comparative Law, Administrative Law, Business, and Debt and Enforcement.

All Committees of the Civil Justice Council are standing committees whose roles are: to monitor and provide advice to the Council on the effectiveness of existing procedures, provide representative opinion of those who use the civil justice system, and to make informed comments on Government proposals for reform of the civil justice system. The value and terms of reference of each committee is reviewed bi-annually.

Oversight Groups were established in early 2009, in response to Dr Spencer's call to broaden the business coverage of the Council. They have been developed to fulfil a similar function to standing committees in terms of a monitoring role, but from a lower resource base. Oversight Groups will monitor their individual civil justice sectors, as a "virtual forum", and where they consider that there is an issue that would require physical discussion, or the establishment of a body to investigate, review, and/or make recommendations to Government they will make proposals to the Executive Committee, and where appropriate, the Council.

Working Groups and Sub-Committees will be established on a sectoral basis, as required, to take forward specific and time-bound pieces of work. Working Groups will be essentially project driven, for example, a working group is currently undertaking a review of pre action protocols. Sub-Committees will be established for either short term specific monitoring and advice within the ambit of a standing committee, or fulfil a specific advisory role, for example the Fees advisory Sub-committee.

The Council and its committees are supported by a secretariat of civil servants.

From 2009, and again with Dr Spencer's recommendations in mind, the secretariat will be re-structured in order to bring in more legal/policy skills to provide better support to Committee Chairs and Council projects. It is intended that the skills of the secretariat be re-inforced by the recruitment up to 12 legally trained interns. The secretariat also intends to recruit a Communications manager to develop better internal and external communications (subject to resourcing).

## Membership of the Civil Justice Council

The Head and Deputy Head of Civil Justice are members of the Civil Justice Council. The Head of Civil Justice is the Chair.

Dr Spencer's recent review of the Civil Justice Council recommended that the Council should remain at its present size of 25; that the Council should be composed of approximately equal proportions of members with a legal and lay (i.e. court user) background; that the number of judicial members should be reduced to 5 or 6; that 7 or 8 members should be legal practitioners; and that the other 12 or 13 members should be drawn widely from user, consumer and advice interests and from academia.

At the beginning of 2008 the constitution of Council was 10 lawyers, 8 judges, and 6 lay members (18 legal/judicial, 6 lay = 24). The Council aims to move toward the 50/50 position in two appointment cycles.

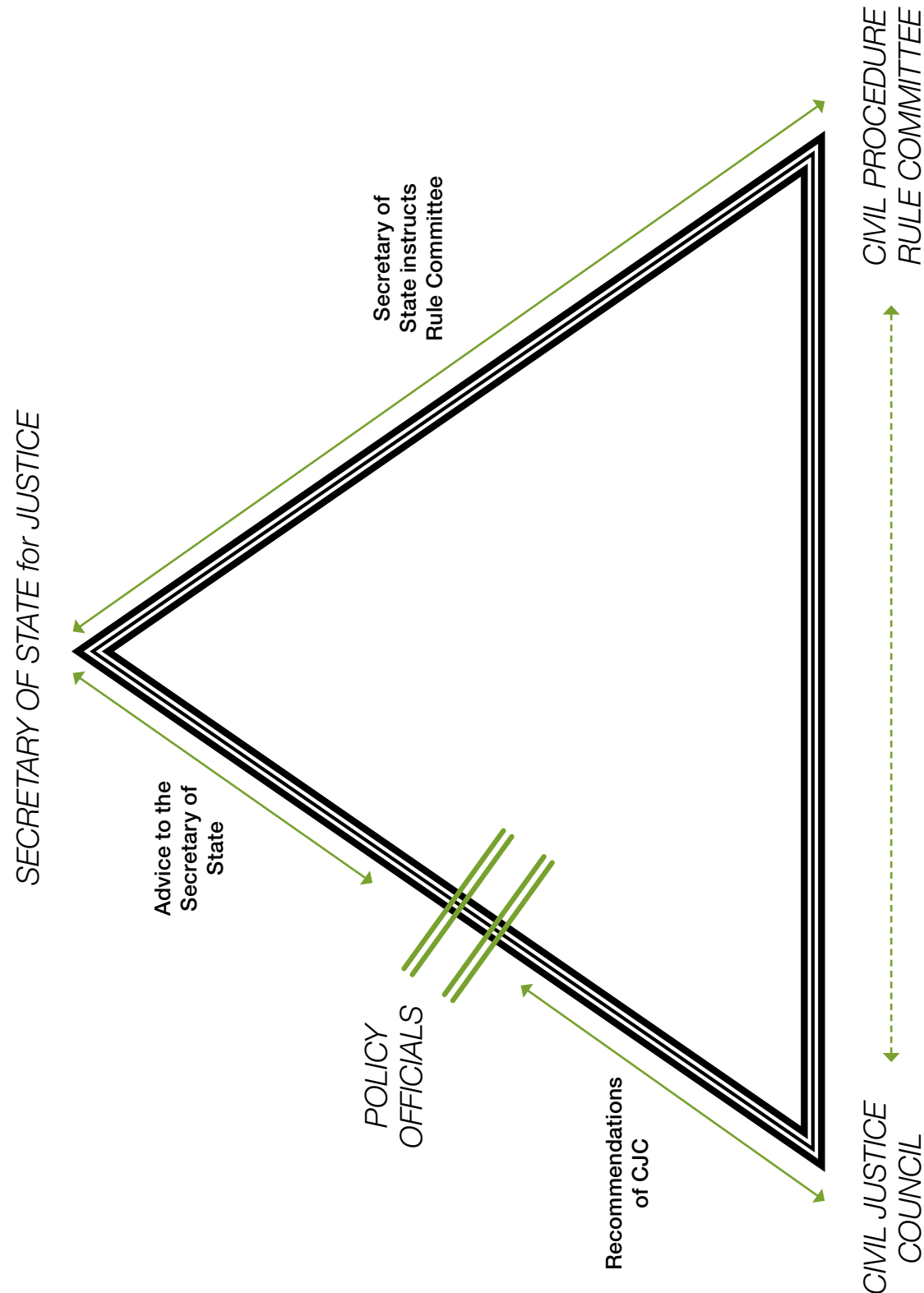
## Funding of the Civil Justice Council

The Civil Justice Council is funded by the Ministry of Justice. The Chief Executive agrees the budget with the policy sponsor in accordance with Government spending rounds, and is responsible for maintaining a financial control system.

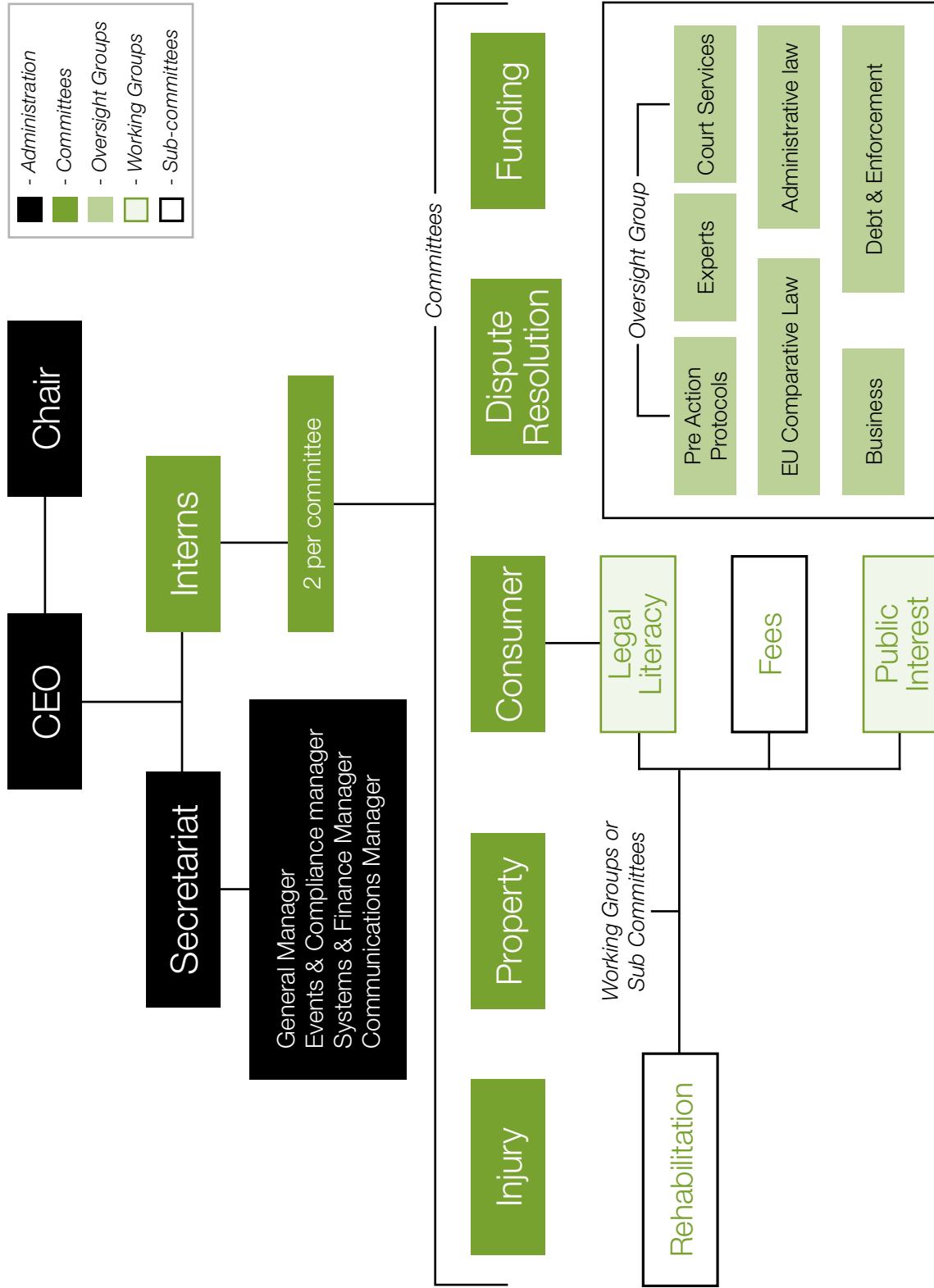
The Civil Justice Council budget for 2008-9 was £ 316,466 of which £211,466 was salary costs and £105,000 was operational running costs

The Chief Executive is the budget holder and accountable officer.

# How the Civil Justice Council Advises Government



# Civil Justice Council New Committee Structure



### 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 Committee

#### 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

From its inception, the Civil Justice Council took steps to promote awareness of civil justice and improve access to advice, information and representation. This was initially the task of the Litigant Information Sub-Committee, whose members had an understanding of lay people's experience of the Courts and included people representing consumers' interests as well as lawyers and the judiciary.

The committee focused on the information that was available for people taking 'small claims' or defending claims made against them. It proposed a new leaflet to emphasise the importance of the pre-action stage, with the working title 'What to do before you sue'. The committee responded to consultations on encouraging people in debt to engage with the legal process, and worked with the then Lord Chancellor's Department on proposals to modernise the civil courts.

The Access to Justice Committee continued to provide expert advice on matters of detail, for example, it commented on the Legal Services Commission's initial proposals for the Community Legal Service, and the provision of Duty Schemes for Housing Possession cases. The committee was also concerned with the impact of Court fees on access and made suggestions about procedures for remission and exemption of court fees.

In addition, the Access to Justice Committee worked at a strategic level to raise the profile of public legal education, i.e., an awareness, knowledge and understanding of rights and legal issues, together with the confidence and skills people need to deal with disputes and gain access to justice. Initially, the committee worked with the Citizenship Foundation to identify ways in which the legal community could support schools in teaching citizenship and assist young people to gain a better understanding of the importance of civil justice issues, their rights and responsibilities. In 2004, the Civil Justice Council held a forum involving legal practitioners and academics, lay advisers, teachers and others working in the field.

The forum recommended the establishment of a new independent body to collate and disseminate good practice in public legal education and act as a co-ordinating body in England and Wales. In January 2006, the Public Legal Education and Support (PLEAS) Task Force was set up and subsequently the Public Legal Education Network ([www.plenet.org.uk](http://www.plenet.org.uk)), was established to continue building a body of knowledge for successful public legal education. It remains active in linking statutory bodies, not-for-profit organisations, legal professionals, researchers, educators and campaigners, and providing examples of good practice tools, guides, case studies and research.

**Vicki Ling and  
Nicola Mackintosh (Chairs)**

### 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 Committee

#### Terms of Reference

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

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

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

The Clinical Negligence and Serious Injury Committee was formed in 2003. It began under the chairmanship of Brian Langstaff QC (now Mr Justice Langstaff) and was then led briefly by HHJ Graham Jones in 2005. From 2005, the Committee was chaired by District Judge Suzanne Burn. The Committee was composed of a range of representatives of key serious injury and clinical negligence stakeholders, including:

Action Against Medical Accidents	Leigh Day & Co
AIG	Medical Defence Union
Berrymans Lace Mawer	Ministry of Justice
Capsticks	NHS Litigation Authority
District Bench	Weightmans
Hempsons Solicitors	Zurich
High Court Masters	3 Serjeants Inn
Irwin Mitchell	39 Essex Street

The work programme of the Serious Injury and Clinical Negligence Committee was divided between making recommendations for reform; responding to consultation exercises; and running stakeholder events.

The Committee conducted a raft of work on various subjects including:

- Periodical payments and indexation;
- The case track limits and claims process for personal injury claims;
- The problems experienced with group injury claims;
- Burden of proof in clinical negligence cases;
- The interface between the public provision for future housing and care for seriously injured claimants and their private law claims;
- Review of proposals in structured settlements reports;
- Indemnities for future loss;
- Future loss claims in relation to housing (Roberts v. Johnston claims); and
- Care claims.

The Committee responded to consultations relating to: proposals for reforming the approach to clinical negligence in the NHS; the draft rules, variation order and practice direction in respect of periodical payments; the way in which CPR Part 36 payments would operate in relation to periodical payments; interim payments; civil legal aid funding in relation to clinical negligence claims; the use of experts in litigated claims; amendments to CPR Part 36 offers; admissions and CPR Part 14; and damages.

The Serious Injury and Clinical Negligence Committee was also instrumental in the organisation of stakeholder events relating to rehabilitation; care claims; and the case management of mesothelioma claims.

Since the Spencer Review, the CJC has extended its focus beyond serious injury and clinical negligence to other areas of personal injury as well. This is reflected in the transformation of the Serious Injury and Clinical Negligence Committee into the Injury Committee; a body chaired by HH Graham Jones.

**Chloe Smythe**

## Committee Members

Michael Napier CBE, QC  
(Chair)

Senior Costs Judge Peter Hurst  
Richard Moorhead  
Robert Musgrove  
Colin Stutt

## Costs Committee – Support to Lord Justice Jackson’s Review of Costs

### 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

A main priority for the Council is to support Lord Justice Jackson’s Fundamental Review of Costs. The Master of the Rolls appointed Lord Justice Jackson to conduct a judicial inquiry into the costs of civil justice amid concerns over the high cost of civil litigation in England and Wales, and the numerous technical challenges on costs that are serving to distract the courts from their primary function.

The Civil Justice Council has a long and successful history in developing practical solutions to the problems that have surrounded costs and funding since the 1999 Conditional Fee Agreement reforms. It has published a series of reports containing proposals to Government for the improvement of costs and funding mechanisms (The “Improved Access to Justice” Funding Options and Proportionate Costs” reports<sup>1</sup>), and has undertaken a series of predictable costs mediations in personal injury claims.

The Council will provide technical and expert assistance to Lord Justice Jackson’s Inquiry, in particular by providing advice during the Inquiry and by holding specialised stakeholder consultation events as required.

<sup>1</sup>. Available on [www.civiljusticecouncil.gov.uk](http://www.civiljusticecouncil.gov.uk)

Although the Jackson Inquiry is not a Civil Justice Council project, it is intrinsically linked to the Vision of Civil Justice Review, which will inevitably consider broader elements of costs and funding.

It is unclear at the time of writing whether, and to what extent, the Civil Justice Council will become involved in the implementation of the Jackson Report. Requests from the Ministry of justice and/or the senior judiciary for post report consultation or practical proposals for implementation would inevitably create a significant impact on the timing for delivery of the Council's vision for Civil Justice Programme. Once such involvement is known, plans will be adjusted accordingly.

Lord Justice Jackson is due to report in January 2010

**Michael Napier CBE QC**  
Chair

## Committee Members

Tim Wallis (Chair)

David Cooke  
Professor Hazel Genn CBE  
Harry Hodgkin  
Michel Kalipetis QC

Robert Nicholas  
Stephen Ruttle QC  
Colin Stutt

## Alternative Dispute Resolution Committee

### 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

At the first meeting of the Civil Justice Council Lord Woolf was keen to have a committee working on the newly emerging subject of ADR, for he saw this as one of the main planks in his Access to Justice vision.

Ten years on we tend to refer to Effective, rather than “Alternative” Dispute Resolution, we have seen mediation and similar forms of dispute resolution become part of the mainstream and the Committee has recently been re-named, to reflect both these changes and its broader remit.

A central problem that the Committee has grappled with is the fact that, although the Overriding Objective placed a duty on the judiciary to encourage ADR, where appropriate, there had been little ADR training and there was uncertainty about the accreditation of mediators. The two constant strands of work undertaken by the Committee in response to this problem have been, first, working with the judiciary and the Judicial Studies Board to introduce mediation awareness training and, secondly, working with the Ministry of Justice on court annexed mediation schemes. The developments that have taken place, particularly in relation to the National Mediation Helpline and the award winning Small Claims Mediation Scheme, are a tribute not only to the efforts of the Committee but also to the contributions of two important allies, the Ministry of Justice and a new body, the Civil Mediation Council.

Mandatory mediation is a topic which has excited many a debate over this period. There are trenchant views against introducing a compulsory element and these were emphatically demonstrated by Committee member Professor Dame Hazel Genn's "Twisting Arms" report. The report analysed the Automatic Referral to Mediation Scheme which the Committee instigated. Although the Committee has fallen short of ever recommending the mandatory route it has considered it important to disseminate information about successful compulsory schemes used in other jurisdictions. It has also had an input into the EU debate on ADR, including the EU Mediation Directive (which itself acknowledges the use of compulsory schemes), and has noted in particular the enthusiasm of the justice community in Holland where there is an extensive, but non compulsory, court annexed scheme.

The ADR case of the decade, *Halsey v Milton Keynes NHS Trust* in 2004, raised positive awareness of ADR but was also interpreted in a way that led to fewer lawyers and litigants taking the ADR road. The case also introduced confusion about the court's role in directing parties to mediate in appropriate cases, although this has largely been resolved in recent speeches by the Lord Phillips of Worth Maltravers and Sir Anthony Clarke (now Lord cum-Ebony).

Other work has focussed on the court rules (and forms, such as the Allocation Questionnaire) and general public awareness. Finally, in completing this brief review, the Committee has had played a small part in ensuring that the Council has practised what it preaches; this has been by participation in the numerous mediated settlements that have been facilitated in the so called "costs wars" and which form part of some of the Council's most important achievements. The Council has led by example and demonstrated the benefits of a mediated approach in terms of flexibility, time, cost and success in reaching a conclusion.

On behalf of myself and my predecessor, Professor Martin Partington CBE QC I would like to thank all who have served on the Dispute Resolution Committee for their many thousands of hours of unsung work.

**Tim Wallis**  
Chair

### Committee Members

District Judge Robert Jordan  
(Chair)

Vicki Bailey  
Helen Carr  
David Carter  
John Gallagher

HHJ Nic Madge  
Derek McConnell  
David Watkinson  
Mike Wrangmore  
DJ Jane Wright

### Housing and Land Committee

#### 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

At a Civil Justice Council meeting on the 28th July 2000 the Council was asked to approve the formation of the Housing and Land Sub- Committee under the chair of David Watkinson. This was duly approved. The sub-committee's terms of reference were;

- \* To consider and respond to proposals relating to the civil procedure rules 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 housing legislation for its impact on procedure and make such response as appropriate

Although the sub-committee is now the Property Committee following the Spencer reforms the committee continues to operate under similar terms of reference.

During its 9 years the committee has been chaired by David Watkinson, David Greene and Robert Jordan. The committee has dealt with a substantial number of consultation papers and lead a number of reforms and changes in Housing Law and practise.

The committee started its work in 2000 responding to the Lord Chancellor's Department paper 'Housing and Land; Proposed New Procedures', issuing proposals for a Disrepair Pre-Action Protocol, responding to the DETR Housing Green Paper, consulting with the Law Commission on reforming housing law, considering the Civil Procedure Rules in relation to Housing cases and considering the Access to Justice final report where housing was singled out.

The substantial work which stated this committee has continued unabated for nearly a decade. It is a tribute to the members of the committee that such an enormous amount of work has been successfully completed on time and effectively. There is insufficient space to list all those consultation papers in this paper.

The review of listing of Housing cases has resulted in a change in the pattern of listing possession cases to ensure they are given sufficient time to be dealt with.

The committees support for the Law Commissions proposed overhaul of possession cases has as yet to bear fruit but the committee remain hopeful that these reforms will be implemented.

There has been a concentration on pre-action protocols. The Disrepair Protocol was successfully introduced, following consultation, on the 8th December 2003. The Rent PRE-Action Protocol following, following consultation, on the 2nd October 2006 and the Mortgage Pr-Action Protocol on the 19th November 2008.

The recent amendments to the Mortgage Pre-Action Protocol include the introduction of a checklist showing compliance for all case listed after 1st October 2009.

Current work includes a guidance paper on Mortgage Law for Judges and a paper on Rights of Audience in Mortgage cases.

I am enormously grateful to all members of this committee both past and present for their dedication commitment and hard work.

**District Judge Robert Jordan**  
Chair

## Committee Members

Mark Harvey  
(Chair)

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

## Pre-Action Protocol Committee

### 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

The Master of the Rolls, as Head of Civil Justice, asked the Civil Justice Council to assume responsibility for keeping the system of pre-action protocols under review. Consequently the Pre-Action Protocol Committee was formed and it set itself five aims and objectives:-

- To consider whether the format and content of the pre-action protocols is presented, so far as appropriate, in a uniform way.
- To look at ways in which the costs associated with complying with pre-action protocols 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 and where necessary to make proposals for change for consultation with a wider group of stakeholders.

## History

The original protocols had been drafted by a number of different groups of stakeholders, organised by the then Lord Chancellor's department. In 2006 the Master of the Rolls asked the CJC to take the policy lead on the future development and management of the protocol system. The policy principles underlying pre-action protocols originated from the government's Civil Justice Reforms. Those principles have not changed. 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;
- To support the efficient management where litigation cannot be avoided.

## Consolidation

The early work of the Committee concentrated upon a consultation on proposals to introduce a Consolidation Pre-Action Protocol that would have replaced the then nine (now ten) pre-action protocols by integrating the core steps and guidance common to all of the pre-action protocols. This was in the light of growing concern that had been expressed in various quarters about the proliferation of pre-action protocols many of which were identical or very similar in substance to each other. In the end the majority of the responses opposed that proposal and there was an understandable reluctance to reduce the number of pre-action protocols from stakeholders who had committed so much time to drafting their respective pre-action protocols originally.

## General Protocol

In the light of those responses the Committee went onto recommending a general pre-action protocol to be used to supplement the subject specific ones and also to form a default practice direction on which new ones could be based. In time and following significant consultation that manifested itself in the new Practice direction on Pre-action Conduct which came into force on 6th April 2009.

This practice direction sets out the general principles governing appropriate pre-action behaviour in all cases and outlines the Court's approach to non-compliance with the general principles as well as with existing pre-action protocols. This protocol was based on the previous Practice Direction but was designed to provide greater clarity. Greater consideration was also given to the involvement of litigants in person a majority user of the court system.

### **Present work**

During this time the Pre-Action Protocol Committee has also been involved in considering and giving recommendations to the council in relation to two of the newest protocols, the Pre-action Protocol on Possession Claims based on Rent Arrears and the Pre-action Protocol on Possession based on Mortgage Arrears.

In addition the Committee has been consulted upon updating amendments to existing protocols forming as it has done, a conduit for review and necessary minor amendments as the protocols age.

### **Next stage**

The Committee is now leading a widespread and fundamental review of the protocols. Six of the protocols are seven years old with four of them over nine years old. Consequently the CJC has sent to all stakeholders a consultation paper co-authored by the CJC and the Ministry of Justice which invites them to review all of the protocols. This review will culminate in a CJC hosted forum to which stakeholders will be invited and which will be held in early 2010. This forum will consider the reviews' recommendations and proposed drafts of revised protocols, with a view to providing advice to the Master of the Rolls. The Law Society has kindly agreed to take the lead in coordinating the various stakeholder reviews and will provide a chair for each protocol review group. All protocols should be reviewed both in terms of ensuring that they remain contemporary, relevant and proportionate and within the review consideration should be given to the Practice Direction on Pre-action Conduct to see if the protocols can benefit from its structure, language and intent.

**Mark Harvey**  
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 Committee

### 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

The Experts Committee was set up in 2003 under the chairmanship of HHJ Paul Collins. From 2005, the Committee was chaired by HHJ Nic Madge until 2008. The membership of the Committee was broadly-based, representative of experts' organisations; the legal professions; government; and the judiciary:

Academy of Experts	Expert Witness Institute
APIL	FOIL
Bar Council	Hugh James
Circuit bench	Law Society
Council for Registration of Forensic Practitioners	Legal Services Commission Ministry of Justice

### Single code of guidance for expert witnesses

In 2003, a single code of guidance for expert witnesses was produced under the aegis of the Civil Justice Council.

### CPR Part 35

The Experts Committee proposed and effected change in the Part 35 Practice Direction in 2004. If an order requires an expert to do anything or affects his work,

the solicitor instructing him is required to serve a copy of the order upon him. In 2006, the Experts Committee began a review of CPR Part 35 upon the request of the Civil Procedure Rules Committee. This was a prelude to a later review conducted by the Ministry of Justice resulting in amendments to improve guidance and greater consistency on the appointment of single joint experts.

### **Protocol for the Instruction of Experts to give Evidence in the Civil Courts**

The Experts Committee was instrumental in the introduction in 2005 of the Protocol for the Instruction of Experts to give Evidence in the Civil Courts. This protocol incorporated what was already best practice followed by the vast majority of experts and those who instruct them. The rationale of the protocol was to serve as a tool for the use of courts, lawyers and experts to help the few experts and lawyers who did not follow either the letter or the spirit of CPR Part 35 and its Practice Direction to do so.

### **Accreditation of experts**

The Experts Committee was instrumental in the organisation of two important stakeholder events relating to medical reporting fees and accreditation of experts. Accreditation remained firmly on the agenda of the Experts Committee until its transformation into the Experts Oversight Group in 2009. For example, it responded to The Use of Experts: quality, price and procedures in publicly funded cases; a 2005 consultation paper by the Legal Services Commission. It also sought to agree some principles of best practice for the accreditation of experts in 2006.

**Chloe Smythe**



## 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**.

## SUMMARY OF RECOMMENDATIONS

### RECOMMENDATION 1

A generic collective action should be introduced. Individual and discrete collective actions could also properly be introduced in the wider civil context i.e., before the CAT or the Employment Tribunal to complement the generic civil collective action.

### RECOMMENDATION 2

Collective claims should be brought by a wide range of representative parties: individual representative claimants or defendants, designated bodies, and ad hoc bodies.

### RECOMMENDATION 3

Collective claims may be brought on an opt-in or opt-out basis. Where an action is brought on an opt-out basis the limitation period for class members should be suspended pending a defined change of circumstance.

### RECOMMENDATION 4

No collective claim should be permitted to proceed unless it is certified by the court as being suitable to proceed as such. Certification should be subject to a strict certification procedure.

### RECOMMENDATION 5

Appeals from either positive certification or a refusal to certify a claim should be subject to the current rules on permission to appeal from case management decisions. Equally, all other appeals brought within collective action proceedings should be subject to the normal appeal rules. Class members may seek to appeal final judgments.

### RECOMMENDATION 6

Collective claims should be subject to an enhanced form of case management by specialist judges. Such enhanced case management should be based on the recommendations of Mr Justice Aikens' Working Party which led to the Complex Case Management Pilot currently in the Commercial Court.

### **RECOMMENDATION 7**

Where a case is brought on an opt-out basis, the court should have the power to aggregate damages in an appropriate case. The Civil Justice Council recommends that the Lord Chancellor conduct a wider policy consultation into such a reform given that it effects both substantive and procedural law.

### **RECOMMENDATION 8**

To protect the interests of the represented class of claimants any settlement agreed by the representative claimant and the defendant(s) must be approved by the court within a 'Fairness Hearing' before it can bind the represented class of claimants. In approving a settlement or giving judgment on a collective claim the court should take account of a number of issues in order to ensure that the represented class are given adequate opportunity claim their share of the settlement or judgment <sup>2</sup>.

### **RECOMMENDATION 9**

There should be full costs shifting.

### **RECOMMENDATION 10**

Unallocated damages from an aggregate award should be distributed by a trustee of the award according to general trust law principles. In appropriate cases such a cy-près distribution could be made to a Foundation or Trust.

### **RECOMMENDATION 11**

While most elements of a new collective action could be introduced by the Civil Procedure Rule Committee, it is desirable that any new action be introduced by primary legislation.

<sup>2</sup>. CPR 52.

## Contingency Fees

### Study of their Operation in the United States of America

In November 2008, the Civil Justice Council published research into the operation of contingency fees in the United States. The purpose of the research was to help inform the debate concerning the types of funding that provide the best access to justice.

The research was commissioned following the recommendations to Government in the paper “Access to Justice, Funding Options and Proportionate Costs, The future Funding of Litigation – Alternative Funding Structures” published in June 2007.

The research was conducted by Professor Richard Moorhead of the University of Cardiff, and the Senior Costs Judge Peter Hurst.

The Paper found that contingency fees could operate in the England and Wales jurisdiction but warns that access to justice may narrow in lower value claims. Conversely it finds that access to justice may improve in larger value claims.

The research also found that; the level of contingency fee charged in the United States is generally not extravagant, there is strong evidence that contingency fees provide improper incentives to settle claims, they do not appear to promote high rates of litigation, and that low value claims are brought.

## Schedule of Stakeholder Events 2008-09

2008-09	
<b>February 2008</b>	The Regulation of Third Party Funding Agreements
<b>March 2008</b>	Collective Consumer Redress - Substantive Law and Process Framework
<b>June 2008</b>	Collective Consumer Redress - Consultation on Draft Recommendations to Government
<b>July 2008</b>	The Regulation of Third Party Funding Agreements II
<b>October 2008</b>	Costs Forum - Current developments, problems & solutions
<b>November 2008</b>	Public Legal Education - Five Years On, Benchmarking, Structure, and Matching Supply to Demand
<b>March 2009</b>	Pre Mediation Event – developing a simplified claims process for lower value, lower complexity personal injury claims
<b>March 2009</b>	Public Legal Education – Judicial Involvement in Public legal education

## Priorities for 2009

### - A Vision for Civil Justice

Dr Spencer's review considered where the Council's future priorities might lie. He consulted extensively with stakeholders in order to gain an understanding of how far the Council had come in terms of business development since its inception in 1999, and what direction it should set for the future.

As part of the natural evolution of the Council, Dr Spencer suggested that the time might now be right (ie ten years on) for the Council to engage in some broader reflection on the effectiveness of the civil justice system, whether its implementation and subsequent development was genuinely successful in delivering the purpose of Lord Woolf's reforms. He also recognised the importance of the Council's "horizon scanning" role, to bring in wider experience into evaluation and future proposals for reform.

It is with Dr Spencer's considerations very much in mind that the Council's main priority for 2009-12 is a wider ranging review of the effectiveness of the Woolf reform ten years on (in reality this is fifteen years on as the original Access to Justice reports were published in 1994 and 1995). To this end the following three years activities will be focussed extensively on a new workstream "A Vision for Civil Justice".

The programme intends to consider the extent of implementation of Lord Woolf's specific proposals; how successful they have been in delivering the goals set; the extent of compliance with the CPR as they now exist; which if any of the original goals have been either sidelined, unsuccessful or overtaken by other developments; and drawing conclusions both on the continuing appropriateness of the objectives then set, and the further measures that should now be taken to improve delivery.<sup>3</sup>

<sup>3</sup>. Review of the Civil justice Council – responding to the needs of Users. Chapter 5. Content of the future work programme. Dr Jonathan Spencer. Spencer also proposed, inter alia, research on non-court based resolution of disputes (eg ombudsmen, inquisitional systems), the further practical extension of ADR methods, improvements in case management techniques, alternative funding, further promoting consumer rights, and a study of what currently inside the court system could be resolved by bodies such as Tribunals.

## 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. He became one of the first eleven Justices of the Supreme Court of the United Kingdom in October 2009.

**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.

**Mr 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. He has been a Council member since 2004.



**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.



**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**

joined Allianz as Director of Claims in June 2008 with responsibility for technical integrity and service delivery. He is a member of the UK Management Board. Prior to this he held a number of senior management positions in the industry, most recently as Claims Director for Groupama. Graham represents Allianz in a number of market initiatives and is currently a member of the Association of British Insurers' High Level Group (HLG) and the Chartered Insurance Institute's Claims Faculty Advisory Board where he advises on their strategy and direction. Graham chairs the Legal Literacy Working Group. He has been a Council member since 2005.

**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. 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.



**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. Appointed a Circuit Judge in 1985, he was Resident 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.

**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.

**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.



**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. Vicky chairs the Debt and Enforcement Oversight Group of the Civil Justice Council. She has been a Council member since 2002.

**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. Nicola sits on the Legal Literacy Working Group and chairs the Administrative Law Oversight Group. She has been a Council member since 2002.

**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.



**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.

**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.

**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 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.

**Tim Wallis**

is a full time, independent professional mediator. He combines 30 years of litigation experience as a solicitor with 15 years of active mediation experience. The Civil Justice Council and the Ministry of Justice have instructed him to mediate industry disputes in the personal injury sector and he recently conducted a mediation of the costs payable under Ministry of Justice's new personal injury claims process. He has also been involved in facilitating industry discussions with insurers and personal injury lawyers for the Civil Justice Council as part of the Costs of Civil Litigation Review Lord Justice Jackson. Based in Cumbria and London, Tim mediates throughout the jurisdiction and in other countries. Sweet & Maxwell retain him as a contributor to the ADR sections of "The White Book" and "The Litigation Practice".

**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.

**Chloë Smythe**

is General Manager 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, Chloë 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**

Kitty Doherty joined the Civil Justice Council in October 2006. She is the Events and Compliance Manager for the Council. Kitty is responsible for recruitment, annual report of the council and venue finding for conferences. She previously worked in the Civil Appeals Office and the Family Division. Kitty is currently undertaking a degree course in Criminology.



**Graham Hutchens**  
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