



**Minutes of the Civil Justice Council Meeting
27 January 2012 10.30 a m
E200, Royal Courts of Justice**

In attendance

Master of the Rolls Lord Neuberger	Chairman	Kate Lotts	Member
HH Graham Jones	Member	Abigail Plenty	MOJ Member
Professor Rachael Mulheron	Member	Alex Clark	Secretary to CJC
Janet Tilley	Member	Chris Morris-Perry	Assistant Secretary
Colin Stutt	Member	Peter Farr	Private Secretary to the Master of the Rolls
John Usher	Member	John Sorabji	Legal Secretary to the Master of the Rolls
Deborah Prince	Member	Andy Caton	Judicial Office
Duncan Campbell	Member		
DJ Robert Jordan	Member		
Amanda Finlay	Member		
Robin Knowles	Member		
Peter Smith	Member		
Tim Wallis	Member		

1. Introduction and apologies

Apologies were received from Lord Justice Moore-Bick, Mr Justice Alistair MacDuff, Mark Harvey, Alistair Kinley, Dr Jane Phipps, John Pickering and Vicky Ling.

The Chairman informed the Council that six Members: Mr Justice Alistair MacDuff (joined 2009); HH Graham Jones (joined 2004), DJ Robert Jordan (joined 2006), Vicky Ling (joined 2002), Janet Tilley (joined 2004) and Colin Stutt (joined 2007) would all be leaving the Council on 31 January. He expressed his gratitude on behalf of the Council for their important contribution to the work and development of the Council.

The Chairman also thanked those out-going members who had agreed to continue to serve on Working Parties. It was noted that Graham Jones had agreed to continue to serve as the Chair of the Pre-Action Protocol Working Party

and that Robin Knowles had agreed to replace Graham on the Executive Committee.

2. Minutes of the Last Meeting

The minutes of the meeting were approved.

3. CJC Business Plan 2012/13

The Council considered and agreed the outline draft business plan submitted by the Secretariat, as revised by the Executive Committee.

In discussion, it was argued that the emphasis of the stakeholder management activity was wrong and should be directed more toward customers of civil justice such as litigants in person and businesses. The Chairman agreed that the item should be revised to reflect the importance of increasing involvement of those groups that the Council represents over engagement with stakeholders such as legal practitioners and the insurance market. Concerns were raised at the level of communication resources that would be needed to support this and the other activities in the plan. It was agreed that this issue should be considered by the newly-formed Planning and Projects Sub-Committee. Members agreed that the Implementation of the Jackson Report activity might include monitoring of the new Code on Third Party Funding. The Chairman observed that the Council should carry out an informal monitoring role of all aspects of the Jackson report.

During discussion, it was also agreed that Professor Rachael Mulheron would replace Graham Jones as Chair of the Collective Redress Working Party.

4. Self Represented Litigants (SRL) Report Implementation

The Chairman observed that that Report had been well-received generally and had helped to raise the profile of the Council. He thanked Robin Knowles, Chair of the SRL Working Party, and Amanda Finlay for their work. The Chairman invited Robin to update the Council on developments.

Robin said that the WP was pleased at the positive response to the Report and the supportive comments from the judiciary and litigants in particular. He said that aim of the Report was to provide practical steps to support litigants which were not dependent on resources. Implementation of the recommendations required the support of various agencies such as court staff and local authorities and the sum of the package was greater than the individual parts. Robin informed the Council that the Access to Justice Foundation had agreed to provide modest funding to support some of the recommendations and that funds had been allocated by the CJC for series of regional workshops. There had also been offers of support from the RCJ Advice Service, the Council of Circuit Judges and HMCTS.

Robin reported that some members of the Working Party had met senior officials from the Ministry of Justice and HM Courts and Tribunal Service to discuss the Report. They received a positive reaction from the Department, although an official response was still awaited. While the aim of the Report was to identify recommendations that were resource neutral, it was clear that resources were required to support bodies which were critical strategically such as Advice Now, Law Works and Law for Life.

In conclusion, Robin observed that the success of the Working Party had resulted from drawing in the right interested parties. It had also demonstrated the value of the Council to policy-makers.

5. High Court and Court of Appeal Fee Consultation – CJC Response

The Chairman thanked John Usher for drafting the response which was agreed by the Council subject to minor amendment. John thanked members for their contributions.

In the following discussion, members considered whether the issue of charging nominal fees on remission should be covered in the response. However, it was agreed that there was insufficient time to consider the question as part of the consultation response as the consultation period ended on 7 February. The Chairman informed the Council that he had raised the issue with the Ministry previously. It was observed that the impact analysis did not appear to cover the deterrent effect on vulnerable litigants. It was suggested that, subject to the availability of resources, the Council could commission a small research project on the impact of court fees and charges on the most vulnerable. It was agreed that the Planning and Projects Sub-Committee should consider the feasibility of such a project including the identification of existing research on the subject. Abigail Plenty agreed to contact the MOJ team responsible for this area and report back.

6. On-Line Legal Services Review

The Chairman referred Members to the request from Professor Richard Susskind for the Council to undertake/support a review of on-line legal services. They agreed that as this was a large, complex the role of the CJC in any review would need to be properly defined and to fit with the responsibilities of others such as the Legal Services Board and PRS. It was noted that some of the issues identified by Professor Susskind for example guidance for self-represented litigants had been covered by the SRL WP.

In view of its over-arching role, it was agreed to await a steer from the MOJ before deciding how to proceed.

7. Projects and Planning Committee

The Council was informed that Dr Jane Phipps had stood down from the Committee for personal reasons and would be replaced by Tim Wallis. The Committee would be meeting immediately Council.

8. CJC Executive Committee Summary

The EC update was noted.

9. The Lofstedt Report and Government Response and PAP

The Chairman drew the Council's attention to the item on the Lofstedt Report in the EC Update. He confirmed that he had written to Jonathan Djanogly to inform him of the progress of the review of the protocols and the concerns of the WP over aspects of his Report.

The Chairman asked Graham Jones, Chair of the PAP WP to update the Council

on developments. Graham reported that the WP had re-drafted the General Protocol which had been cleared by the Executive Committee for consideration by the Council; this had not been circulated by the Secretariat. The aim of the WP was to produce simple straightforward generic documents. On completion of the GP, the WP would turn its attention to the Protocol on Clinical Negligence. It was noted that there had been previous attempts to simplify the Clinical Negligence Protocol which had proved unsuccessful due to stakeholders feeling proprietary about them. There followed a discussion about the desirability of checklists and enforceability of the Protocols. In view of these uncertainties, it was agreed that further work should be delayed to enable the Master of the Rolls to seek clarification from Lord Justice Jackson on these points.

10. Protocol on Expert Evidence Working Party

The Council was referred to the progress update provide in the EC in the absence of the Chair of the WP, John Pickering. Robert Jordan, a WP Member, confirmed that there had been a virtual meeting and that the WP would meet in person in February.

11. Contingency Fees

The Council was informed that Jackson LJ had had proposed that the CJC set up a Working Party to work out the details and possibly to produce some model form contingency fee agreements. The Executive Committee had agreed to wait for an update from the MOJ on its plans for contingency fees before reaching a decision. Now that it seemed likely that contingency fees would be introduced the Council agreed to establish a working party under the chairmanship of Mike Napier QC.

It was agreed that Council Members should indicate whether they would like to serve on the WP and/or suggest stakeholders who should be involved.

12. CJC Recruitment

Members were informed that a legal executive and Fellow of the Institute of Legal Executives (ILEX) were being recruited to the Council to replace an outgoing solicitor. Deborah Prince had agreed to sit on the interview panel which will be chaired by Jo Gordon, Head of Strategy and Governance in the Judicial Office.

A recruitment exercise was to begin shortly to appoint three new judicial Members to the Council to replace DJ Robert Jordan, HH Graham Jones and Mr Justice MacDuff whose terms of appointment end on 31 January.

13. Referral Fees and Jackson Implementation

Abigail Plenty informed Council that provisions banning Referral Fees and implementing the Jackson Reforms had been included in the LASPO Bill now before Parliament. The Department was in touch with stakeholders on preparation for the ban on referral fees; officials were reviewing the timetable for implementation of the Jackson Reforms in the light of the slow progress of the Bill through Parliament. (An announcement has been made the reforms will be implemented in April 2013)

14. AoB

Charges in civil cases

Following a request from ILEX that there should be parity of charges with solicitors for all civil cases, the Chairman proposed that a Sub-Committee be set up to review the issue. The WP should include nominees from ILEX and the Law Society and a costs judge. The Council endorsed the proposal.

Contingency Legal Aid Fund (CLAF)

The Chairman reported that he had been approached by members of the senior judiciary over the establishment of a CLAF to fund litigation. It was observed that if a body was set up it could duplicate the work of the Bar Council. It was agreed to await developments in the market before considering the matter further.

15. Law Commission Consultation paper: Insurance Contract Law: Post Contract Duties

David Hertzell, the Law Commissioner leading the Consultation, presented the main proposals to the Council. It was agreed that there was no need for a CJC response as it was broadly supportive of the proposals but individual members could respond representing their particular constituencies where appropriate.

Chris Morris-Perry
Assistant Secretary