



**Minutes of the Civil Justice Council Meeting
19 October 2012 10.30 A M
E200, Royal Courts of Justice**

In Attendance

Master of the Rolls Lord Dyson	Chairman	District Judge William Jackson	Member
Lord Justice Moore-Bick	Deputy Chairman	Craig Budsworth	Member
Mr Justice Foskett	Member	Robin Knowles	Member
Mark Harvey	Member	Kate Lotts	Member
John Pickering	Member	His Honour Judge David Grant	Member
Amanda Finlay	Member	Peter Farr	Secretary to the CJC
John Usher	Member	John Sorabji	Legal Secretary to the Master of the Rolls
Tim Wallis	Member	Chris Morris-Perry	Assistant Secretary to the CJC
Professor Rachael Mulheron	Member	Andy Caton	Master of the Rolls' Private Office
Robert Wright	Member	Martin Heskins	Law Society, Observer
Peter Smith	Member	Mark Hatcher	Bar Council, Observer
Alistair Kinley	Member		

Welcome and apologies

- 1.1 The new Master of the Rolls, Lord Dyson, was welcomed by members at his first meeting as Chairman. He welcomed His Honour Judge David Grant and District Judge William Jackson who joined the Council as the Circuit Judge and District Judge members respectively, and Mark Hatcher from the Bar Council and Martin Heskins from the Law Society as observers.
- 1.2 Lord Justice Moore-Bick, Deputy Chairman, announced that this would be his last Council meeting, as he would be retiring from office at the end of 2012. Lord Dyson thanked him for his service on behalf of the Council.

1.3 Apologies were received from Duncan Campbell, Jo Gordon, Deputy Director in the Judicial Office and Abigail Plenty, MOJ: Robert Wright attended in her place.

2. Minutes of the last meeting

2.1 The minutes of the last meeting (20 July) were approved.

2.2 Members were advised of Lord Neuberger's decision not to revise Band A Guideline Hourly Rates so that CILEX Fellows with suitable post-qualification experience could receive parity with solicitors. This was due to no evidence being provided to justify a revision as the Guidelines reflect the market place rather than prescribing market practice. However, the Chairman informed the Council that there would be a review of the wider issue of Guideline Hourly Rates in the near future.

3. Minutes of the last Executive Meeting

3.1 The minutes of the last meeting (4 October) were noted.

3.2 Members were informed that the Triennial Review of the CJC was due to take place in the last quarter of 2013 and the first quarter of 2014. This was a routine procedure for arms-length bodies.

4. Self- Represented Litigants Report Implementation

4.1 The Master of the Rolls thanked Robin Knowles, the Chairman and members of the Working Party for their important work so far. Robin observed that the team effort involved in driving implementation was ever increasing. Their aim was to have implemented as many of the recommendations as possible by 1 April 2013 when the legal aid changes would come into force. The key staging point would be the National SRL Workshop on 30 November.

4.2 The purpose of the Workshop was to take stock of what had been achieved so far and set the agenda for the remaining six months. There was a broad invitation list drawing together a breadth of expertise. Lord McNally, Minister for Family Justice has agreed to speak at the event; officials from HM Courts and Tribunals Service and MoJ leading on SRL work; and lay advice and pro bono practitioners from around the country. Council Members were invited to make suggestions for additional attendees.

4.3 Robin underlined the importance of the combined effort of individuals involved in implementation and that there was a part to play for everyone in the court and advice sector. There was a readiness to improve effectiveness but at the same time realism about what could be done. DJ Jackson suggested that in any one day three-quarters of court users may be SRLs and proposed that consideration should be given to producing guidance for the judges on their role. Robin confirmed that guidance was being prepared and that he would welcome the input of the judicial members of the Council.

4.4 Members considered the opportunity provided by Judicial College training, in particular, training on civil justice; the majority of SRLs would present in small claims and possession hearings. DJ Jackson observed that positive feedback had been received in cases where cross-examination was limited and the value of preliminary hearings. Following the discussion, Robin confirmed that he would be in contact with the College to discuss guidance for judges. He observed that there was likely to be a dynamic shift in civil justice from April 2013, with the SRL issue taking centre stage.

4.5 The Master of the Rolls thanked Amanda Finlay for her report of the Legal Services Research Centre Conference. Members noted that the struggle to support SRLs was a problem for countries across the world due to the current socio-economic conditions and that this could be an opportunity for the CJC through its work to take the lead. One of the themes of the conference was how to explain the court process and role of the judge to make it more comprehensible to users who were frightened by the complexities of the law.

5. Jackson Reforms Implementation

5.1 Robert Wright updated members on progress on implementation. He informed members that the LASPO Act had received Royal Assent in May. Part 2 of the Act included the Jackson Reform provisions which required various new rules, regulations and changes to procedures to implement them. The CPRC had commenced its consideration of the draft rules on QOCS (Part 1) and Part 36 on 5 October; scrutiny would continue at its subsequent meetings in November and December. Subject to Ministerial approval, new rules on the recovery of ATE insurance premiums for clinical negligence were due to be submitted in November together with QOCS (Part 2) and DBAs. Members were advised that the MOJ had set up dedicated pages on the Justice web-site to report on progress of implementing the Jackson reforms.

5.2 Members were informed that the Defamation Bill was under consideration by the House of Lords. Lord McNally had announced that the CJC would be asked to look at costs protection in defamation and privacy cases and provide advice to the Government by the end of March 2013 in time for implementation of the Bill. The terms of reference were being finalised.

5.3 Robert confirmed that the CPRC had reviewed the first draft of the revised RTA Protocol extension to personal injury cases up to £25,000 and to employment liability and public liability cases; their comments were now under consideration. A revised version of the draft Protocol would be submitted to the CPRC for consideration on 23 November. Further stakeholder engagement would follow. He reiterated that RTA extension would be introduced from April 2013 and that they were working closely with the Portal Board on software changes. Tim Wallis, Chairman the Portal Board, confirmed this but raised concerns over the effect of the delay in agreeing a final draft on progress to design a technical specification. Lord Justice Moore-Bick, Chairman of the CPRC, reported that the Committee was now more concerned with the proposals on costs rather than the architecture; he believed it would be safe to start building the software on the current draft of the Protocol. However, some members remained concerned at the timetable, in view of the link between costs and structure and felt that including employer and public liability cases would prove problematic.

5.4 Robert confirmed that the MOJ were looking at fixed fees in personal injury cases in the light of consultation responses and, as part of this exercise, had asked Professor Paul Fenn to review Table B (An appendix to the Jackson Report on costs in personal injury and other cases). Members expressed concerns at the lack of consultation to date and were concerned that if the question of fees was not settled by April, certain cases would fall out of the Portal. Members were informed that the MOJ would be meeting with the Portal Board to discuss forms required by insurers to process employment and public liability cases. It was pointed out that insurers would not accept liability in disease cases if they couldn't see the medical reports. It was confirmed that the development of the software solution would begin with vertical extension, so decisions concerning employment and public liability cases were no so critical. To sum up, the Chairman asked members to raise any further comments and objections to the CPRC as part of its consultation of the draft Protocol regulations; these would be directed to the MOJ.

5.5 Professor Rachael Mulheron then raised concerns about the draft DBA rules in particular what

costs would be included in the cap on recoverable costs and that the wording of the current draft could mean that the DBAs would be under-regulated. In view of the short deadline for responding to the MOJ consultation on the draft rules, it was agreed that Peter Farr, Professor Mulheron and Mike Napier of the CJC DBA Working Party would meet to agree a response; this has now been submitted.

- 5.6 Mark Harvey raised concerns over the continued lack of information on transitional arrangements for cases started before 1 April. Lord Justice Moore-Bick confirmed that transitional arrangements for some of the Jackson reforms had already been processed by the CPRC for example on cost budgeting, but not for proportionality. He asked Mark to inform him what part of the rules required transitional arrangement. Robert Wright also agreed to raise the issue with Senior Costs Judge Hurst and report back to the next Council meeting in January 2013.

6. Civil Justice Reform

- 6.1 Members considered Council Member Mark Harvey's letter to the Master of the Rolls about concerns over the impact on legal firms of forthcoming civil justice reforms in particular, costs budgeting and court time management. On costs budgeting, members raised concerns that Precedent H (a costs budgeting form produced by HMCTS) which had just been published was not the final version; this form was being used to assist firms to prepare for greater use of budgeting across civil litigation. They were informed while finishing touches to the form were underway; it was unlikely to change from the latest version. The final version would be published in December for incorporation into the Civil Procedure Rules.
- 6.2 A discussion followed on court-time management, in particular, the time taken by judges to issue judgments and other decisions following a hearing. Mark provided two examples where it had taken 6 months for the judge to issue a decision following the end of the hearing. He said that while this uncertainty did not create particular problems currently in fee paid personal injury cases, it would create difficulties in future in cases where, for example, funding was being sought from third party funders or ABSs. The Chairman recognised the commercial problems for firms, but made clear that it was not possible to provide certainty on the period of time between hearing and decision in view of the nature and complexity of cases. The length of time was a matter for the individual judge and would depend (for example) on their level of expertise and experience. In very complicated cases, other commitments etc. Firms could ask a judge for a minimum decision time. Where a firm was dissatisfied by the length of time taken it could submit a complaint to the Presiding Judge.
- 6.3 Members agreed that there should be a smooth and timely decision process, but recognised the difficult issues involved for example that there were a fixed number of judges who were coming under increasing strain in view of the current economic climate. Members noted that there were internal guidelines on the length of time from the hearing to the issue of a judgement in the Court of Appeal. These could be extended to other courts in the future.
- 6.4 Members agreed that in the changed financial landscape following April 2013, some components of the system would need particular scrutiny. The implications of new IT systems on litigation firms would increase the importance of timing; where there were delays firms would question the reasons for this. In view of this, the Council would need to be more vigilant about the issues, the importance of the changes in the processes and co-ordination of competing components of the justice system and the need for effective training. In agreeing with this approach, the Chairman observed that the judiciary had been too secretive historically, but that there was now more transparency due in part to the intervention of the

Judicial College publishing specimen materials for judges. It was agreed that the publication of the internal guidelines for the Court of Appeal on delivering judgements would be in keeping with this approach; The Chairman agreed that the proposal should be considered by the Judicial Executive Board.

- 6.5 In further discussion, it was proposed that the Council should look at the issue of court delays and to suggest improvements to the civil justice system, for example Service Level Agreements for particular cases. These were in place in other practices and it was felt that such changes might make England and Wales the jurisdiction of choice for litigants and reap financial rewards for law firms. Members were reminded once again of the standard in place for delivering judgments in the Court of Appeal and the limitations on improving this presented by the fixed number of judiciary. The pressure from the MOJ to deliver improvements was also noted.
- 6.6 Members turned their attention to the wider financial aspects of civil justice reforms such as unanticipated changes to business practices. They suggested that the Council might look at principles and practices for financing litigation for law firms. The Chairman reiterated that if the case is made, there cannot be significant improvements with the present number of judges. It was agreed that there was a need to know from funders what they were looking for in delivery times and the effects of uncertainty on third party funders for instance.
- 6.7 The Chairman suggested that a paper should be prepared by the Secretariat for the next Council meeting on how the Council might take this forward.

7. Working Party Updates

Pre-Action Protocols

7.1 John Sorabji, Member of the Working Party, informed members that the CPRC had been due to consider four draft Protocols at their October meeting. These were the Publication PAP (formerly known as Defamation), the General Pre-Action Protocol, and the Debt Protocol. In addition, the first draft of a Personal Injury Protocol had also been submitted. However, consideration had been postponed due to other business. Members were also informed that a meeting was to be held to discuss MOJ proposals for a Mesothelioma Protocol.

ADR

(i) Handbook

7.2 Tim Wallis, Chairman, advised members were advised that the OUP had decided to publish the book. Mr Justice Ramsey, HHJ Bartle, DJ Margaret Langley and Tim Wallis were working with OUP on the text. The Judicial College would shortly be considering a suggestion from the OUP that the front cover of the handbook will state that the publication is 'from' the JC and the CJC. Ramsey J would be approaching Lord Dyson to write the foreword to the book.

(ii) Education

7.3 Members noted that the second stage of the research on this topic, a report the availability of ADR training in vocational establishments was being considered by the Academic Committee of the Civil Mediation Council. The first stage of the research on ADR training for undergraduates had been reviewed by the Council on 5 July.

8. Consultation Papers

- 8.1 The Council noted the summary report of recent Government consultation papers and council responses. Members thanked Craig Budsworth for drafting the response to the Claims Management Regulator's consultation on Claims Regulator. This was submitted as amended on 5 October. It was noted that, as no member had come forward to prepare one, the CJC had not prepared responded to the consultation on the Damages Act: Discount Rate paper. It was acknowledged that the reason for this was probably because of the polarisation of views on the Council which would make it difficult to produce a response which all members would be happy to sign up to. Some members were responding, as representatives of their constituents. Members also noted the EU consultation on cross-border RTAs. Following a discussion, it was agreed that there was no need for the Council to respond at this stage however, if problems were encountered by members the Council would engage with the EU and MOJ.
- 8.2 The MOJ reported that the consultation papers on whiplash and increases to the small claims limit in personal injury cases would be published shortly. Following a provisional consultation on the remission of fees in employment tribunal cases, a further consultation extending the system all courts and tribunals would be published in January 2013.
- 8.3 A discussion followed of the Council's approach to consultations. It was suggested that difficulties in synthesising a response should not be a reason for not responding, if it was clear that one is required, for example on the Defamation Bill . Some consultations were in the margins of CJC work, and in view of resources, members should review each consultation on its merits. It was observed that, for example on the EU consultation on collective redress, responses were not required, but some form of intervention may be needed at the implementation stage. This broad approach was agreed.

9. Recruitment Update

Judicial Appointments

- 9.1 The judicial recruitment campaign had been completed successfully.

Lay Advice Sector Member and Consumer Affairs Expert Appointments

- 9.2 Members were informed that two candidates had been interviewed for the lay advice sector post and three for the consumer affairs expert post. The selection panels' recommendations for both appointments would be submitted to the Master of the Rolls for approval shortly. In addition, in view of their expertise, some of the unsuccessful candidates would be invited to participate in future work of the Council.

10. CJC Annual Report January 2011 to March 2012

- 10.1 Members noted the draft chapters of the report and were asked to submit any further amendments as soon as possible.

11. AoB

- 11.1 No items were submitted.

Date of Next Meeting: Friday 31st January 2013.