



**Minutes of the Civil Justice Council Meeting
20 July 2012 10.30am
E200, Royal Courts of Justice**

In Attendance

Master of the Rolls Lord Neuberger	Chairman	Duncan Campbell	Member
Lord Justice Moore-Bick	Deputy Chairman	Craig Budsworth	Member
Mr Justice David Foskett	Member	Peter Farr	Secretary to CJC
Mark Harvey	Member	John Sorabji	Legal Secretary to the Master of the Rolls
John Pickering	Member	Jo Gordon	Judicial Office
Amanda Finlay	Member	Chris Morris-Perry	Assistant Secretary to CJC
John Usher	Member	Andy Caton	Master of the Rolls' Private Office
Tim Wallis	Member		
Professor Rachael Mulheron	Member	Martin Heskins	Law Society, Observer
Abigail Plenty	Member		
Peter Smith	Member		
Alistair Kinley	Member		

Welcome and apologies

The Chairman welcomed Mr Justice (David) Foskett who had joined the Council as the High Court member replacing Mr Justice (Alistair) Macduff, and Martin Heskins from The Law Society, as observer. He welcomed Peter Farr as the Council's new Secretary, and recorded thanks to Alex Clark who had left to become the President of the Family Division's Private Secretary. Apologies were received from Robin Knowles and Kate Lotts.

The Chairman confirmed that he would be leaving his post of Master of the Rolls on 30 September; he had been appointed to the office of President of the UK Supreme Court. He informed members that he it was with regret that he would be giving up his post as Chairman of the Council. He said that he had learned a great deal from members and that their expertise had meant the Council was making a very valuable contribution to civil justice. Members had worked tirelessly for the public's benefit, but

that their work had not generally been recognised.

Main Items

1. Minutes of the last meeting

John Usher asked that it was recorded that the MOJ had updated the members on developments to extend the RTA Portal at the last meeting. The minutes of the last meeting (26 April) were approved, as amended.

2. Self-Represented Litigants Report Implementation Update

Robin Knowles, Chairman of the Working Party, had submitted an update report to the Council for information. Amanda Finlay, member of the WP, reported to members that there had been very positive activity since the report had been presented to the MOJ. Funding had been secured from the MOJ 2011/12 budget to help implement many of the recommendations of the report. Further funding had been secured from the 2012/13 budget to support a number of advice agencies, AdviceNow, Law Works and Law for Life. It was agreed that the CJC should fund a scoping study to review court forms; Advice Now had received funding from the MOJ to develop their on-line information.

Members were informed that work now underway to implement the recommendations interlocked with work being carried out by other agencies including 3rd Sector organisations which had welcomed the report. The recommendations represented a very significant change of approach in dealing with litigants in person and it was pleasing that the WP had received such positive support from the MOJ and other agencies. Work now in train would result in substantial changes to the system by the end of 2013. A National Forum was planned for 30 November to review progress since the regional workshops held in March and April and agree next steps ahead of implementation of the Legal Aid provisions in the LASPO Act in April 2013.

The Master of the Rolls commended the ongoing work to implement the recommendations and observed that this was exactly the sort of the work that the Council should be doing. He informed members that Jonathan Djanogly, Minister for Justice had praised the report at their recent meeting.

3. CFA (DBA) Working Party

Draft advice to the MOJ on Damaged Based Agreements (DBAs) had been submitted by the Chairman of the WP, Mike Napier, to the Council for comment. The Council was advised that the latest version of the advice included amendments and comments raised at the Executive Committee (8 July) and the last meeting of the WP (18 July). Final advice would be submitted to the MOJ at the end of July. Peter Smith presented a summary of the report, as a member of the Working Party.

Members noted the WP membership included a good cross-section of interests including the business sector and that, in addition, representations had been received from APIL and PIBA. The topic of DBAs was significant and the report contained recommendations which would increase options for solicitors and barristers for setting up DBAs. The Council noted that it was important for reasons of access to justice and to preserve competition in market that DBAs were not implemented badly otherwise this would lead to another cost war; the advice should take account of practical implications. It was observed that it had been very difficult to engage end-users (consumers) in the exercise; Duncan Campbell had provided a business perspective.

The WP had faced a number of challenges in drawing up the report not least the short time-scale set by the MOJ. Different views were expressed by WP members on a range of issues including the defining and benefits of using the 'Ontario' model of DBAs and setting caps on damages which had been reflected in the draft advice. The WP felt that a primary aim of the advice should be to provide consumer protection. In view of the short-time scale, there were some also wider policy issues which would require further consideration by the MOJ.

In discussing the detail of the report, Council members echoed concerns over the short time-scale for delivery of the advice given the complexities of the subjects. Members suggested changes to the detail including on the cap for consumer/SME/commercial cases (Duncan Campbell felt there should be a cap in all cases so a claimant has a majority interest in the damages); they were also concerned at possible inconsistencies with the QOCS report on DBAs. Members noted that the report had set out possible ingredients of a DBA for consideration to provide flexibility for those involved rather than drafting regulations as this was a matter for the MOJ and regulators. Martin Heskins said that The Law Society would await MOJ decisions on DBAs (and QOCS) before issuing practice notes. Concerns were also expressed in particular at the impact of the introduction of DBAs on the ATE market and the possibility of satellite litigation. In view of the short-time scale, it was agreed that there were some policy issues which would require further consideration by the MOJ.

Mark Harvey queried whether the case law protection cited in the report (Hodgson immunity) lawyers not being liable for adverse costs was as comprehensive as the report suggested, and this was referred to the Working Party.

The Chairman praised Mike Napier on behalf of the Council for his outstanding work in chairing the WP and producing an effective report given the twin context of limited time and complex subject matter.

4 QOCS Report

The QOCS Report which had submitted to the MOJ had been circulated to Council members for information. The Chairman began by saying that the Working Party had produced a really impressive report. The Chairman of the WP, Alistair Kinley, informed members that there had been two meetings of the WP; the MOJ had asked for advice to be submitted by the end of June. The draft had been circulated to the Executive Committee for comment before it was submitted.

In summarising the report, Alistair highlighted concerns of the WP over the use of low and early Part 36 offers to deprive claimants of QOCS protection, the effects of discontinuance on claimants' ability to recover costs; how QOCS would operate in mixed claims in particular those which included credit hire agreements. There had been some debate over whether QOCS protection should be discretionary or should be set out in black and white terms. The Council was informed that the Civil Procedure Rule Committee (CPRC) was now considering the QOCS report. In looking at the scope of QOCS it was agreed that personal injury should be widely defined to give maximum protection and should include group litigation.

Council members discussed the effect of QOCS on the ATE market. Members were divided on whether a new regime would have an adverse effect on the ATE market; some felt that as claimants would receive damages there would be a need for ATE. Peter Smith was, however, concerned that under a new regime ATE would be less

attractive.

There was discussion on the 10% increase in damages under Part 36 offers; some felt that this increase would be no threat to the insurance market. Members questioned whether it was right for claimants to pursue claims at no risk and whether there should be protection if they did not accept the Part 36 offer. Others felt claimants were vulnerable to losing QOCS protection if a defendant put in a tactically strong Part 36 offer. There were also concerns about mixed claims and how QOCS might be applied in particular where credit hire was involved. Strong views were expressed on both sides of this issue. Tim Wallis, Chair of the ABI technical credit hire committee confirmed that concerns had been raised that this issue had been set aside.

More generally, members were concerned that the MOJ had still not set out its overall timeline for changes and the continuing effects of these uncertainties on the BTE and ATE markets (in particular) ahead of the implementation of the Jackson Reforms in April 2013. Abigail Plenty reassured members that this work was in train, supported by the work of the CJC.

5. Guidance on the instruction on the use of experts

John Pickering, Chair of the WP, submitted the draft version of the Guidance for consideration. The Guidance was designed to be used by those involved in instructing experts and experts themselves. The document was designed for ease of use and uncontroversial.

Discussion focused on the paragraph concerning the use of contingency fees to fund expert witnesses. John Pickering informed that WP members expressed strong views that these fees should not be available for experts, despite the fact such a practice was permitted in law. Following an exchange of views, it was agreed that the paragraph be amended to make clear that it was for the court to approve such a practice in individual cases. The Guidance was approved as amended, and would be published on the CJC website and sent to the Civil Procedure Rule Committee.

6. CILEX GUIDELINE HOURLY RATES FOR FELLOWS OF THE CHARTERED INSTITUTE OF LEGAL EXECUTIVES (CILEX)

The Chairman informed members that, in his capacity as Master of the Rolls, has been asked by the President of CILEX to review whether CILEX Fellows with 8 years post-qualification experience should be entitled to Band A hourly rates as of right, in line with solicitors with similar experience. He had set up a WP chaired by DJ Langley and included representatives from CILEX and the Law Society. A note of the meeting held on 26 June was circulated to the Council for information, and would now be considered by the Master of the Rolls in reaching a decision on the request.

7. OTHER WORKING PARTY UPDATES

PAP

John Sorabji informed members that the draft revised General Pre-Action Protocol and Debt Protocol had been approved by the CPRC. Further comments on the Debt Protocol had been received from a member of the CPRC for consideration. In view of this, the two documents together with the draft Publication (previously Defamation) PAP would be submitted to the CPRC at their next meeting.

Work was now underway to review revise the personal injury, clinical negligence, rent

arrears and housing disrepair PAPs.

The Master of the Rolls confirmed that the MOJ had written to the Council seeking its assistance to draw up a Mesothelioma PAP. The Master of the Rolls' office was discussing with the MOJ what exactly was required. Further information would be provided to the Council on the outcome of these discussions.

ADR

Education

Tim Wallis, Chairman of the WP, submitted a report prepared by an undergraduate student, Mr Ali Nouraei on undergraduate teaching of ADR. This is the first stage of the research project on the provision of ADR teaching. The second stage covering post-graduate training is due to be delivered in the autumn. On completion of the research, the Academic Committee of the CMC will report its findings to the Council.

Handbook

Tim reported that the editorial committee (Tim, Mr Justice Ramsey and DJ Langley) were continuing to work with OUP and that the publisher is moving from provisional approval to a firm commercial decision to proceed. The OUP was seeking assurances from the CJC and others for assistance in the publication and marketing of the book. The Council considered how it might support publication of the Handbook. There was discussion on whether it should be sponsored by the CJC or the Judicial College. Views were expressed that if the CJC was in the lead it might reach a wider audience, however, it was noted that if the JC mandated, the Handbook would be more likely to be used by judges.

8. MOJ Update

Abigail Plenty updated members on MOJ plans to extend the RTA Portal Scheme in terms of raising the claim threshold, and extending it to employer and public liability claims. She reminded the Council that the informal consultation had now closed. A sub-committee was now assisting the Ministry in its plans to introduce the changes. Abigail confirmed that changes to the Portal needed to be made by April 2013; the Prime Minister had made a public commitment to the deadline. In discussion, Abigail confirmed that the mesothelioma protocol would need to be considered in October. Council members were very concerned that it would not be possible to make the necessary technical changes to the Portal by April 2013 and the disastrous impact of such a failure. More generally, concerns were expressed over the ambitious implementation timetable for the Jackson recommendations.

9. BIS Consultation on Collective Redress

Following the last meeting, Robin Knowles had proposed to members that the Council should not submit a formal response to this BIS consultation. It had responded to two previous consultations and the latest consultation paper was predicated on its responses. Instead it was agreed that the Council should write to the Department offering its assistance in implementing any changes.

10. Observers

The Council was reminded that a member of the Bar Council would be invited to observe the next Council meeting in October.

11. CJC Recruitment

The Council was informed that interviews for the Circuit and District Judges had been completed. Interview reports from the panel were being compiled. Mr Justice Foskett had of course been appointed in time to attend this meeting.

The recruitment campaign for the lay advisor and consumer affairs expert were underway. Advertisements had been published in the 'Sunday Times' and Guardian Diversity On-Line pages as well as the Public Appointments and CJC websites. Details of the vacancies were being sent to other umbrella bodies and interested parties. The closing date for applications was 13 August.

12. Tribute to the Chairman

Lord Justice Moore-Bick led tributes from members to the Master of the Rolls in his role as Chairman of the CJC. He said that the Council had thrived under his stewardship. He was praised as an energetic and enthusiastic leader.

Date of next meeting: Friday 19 October 2012