THE LAW SOCIETY OF NORTHERN IRELAND

REVIEW OF CIVIL AND FAMILY JUSTICE: THE REVIEW GROUP'S DRAFT REPORT ON CIVIL JUSTICE

Response of the Law Society of Northern Ireland

96 Victoria Street
Belfast BT1 3GN
Tel: 02890 23 1614
Fax: 02890 232606
Email: info@lawsoc-ni.org
Website:www.lawsoc-ni.org

Introduction

The Law Society of Northern Ireland (the Society) is a professional body established by Royal Charter and invested with statutory functions primarily under the Solicitors (NI) Order 1976 as amended. The functions of the Society are to regulate responsibly and in the public interest the solicitor's profession in Northern Ireland and to represent solicitors' interests.

The Society represents over 2,800 solicitors working in approximately 520 firms, based in over 74 geographical locations throughout Northern Ireland and practitioners working in the public sector and in business. Members of the Society thus represent private clients in legal matters, government and third sector organisations. This makes the Society well placed to comment on policy and law reform proposals across a range of topics.

Since its establishment, the Society has played a positive and proactive role in helping to shape the legal system in Northern Ireland. In a devolved context, in which local politicians have responsibility for the development of justice policy and law reform, this role is as important as ever.

The solicitor's profession, which operates as the interface between the justice system and the general public, is uniquely placed to comment on the particular circumstances of the Northern Irish justice system and is well placed to assess the practical out workings of policy proposals.

February 2017

Civil Justice Report - Response to Recommendations

CHAPTER 3 - PAPERLESS COURTS (PAGES 13 - 40)

REC NO.	RECOMMENDATION
1	**Consideration to be given in the next Programme for Government to include a commitment to the digitalisation and modernisation of the courts process during the next Assembly mandate.**
	The Society endorses this recommendation.
2	**A business case to be developed for digital courts which would capture all of the anticipated monetary and non-monetary benefits, based on experience in with other comparable jurisdictions and in the local criminal justice sector.**
	This is agreed. It should be noted though that the existing Court system is starting from a very modest position in terms of technological capability at present. Basic equipment is often unreliable and the range of technical issues encountered during the presentation of live link and video evidence provides a compelling example of these limitations. The courtroom machinery is a considerable distance behind the position that the Review aims to achieve, reinforcing the importance of substantial upfront investment to make the improvements required.
3	**The ultimate aspiration to be the creation of paperless courts.**
	As indicated above substantial upfront investment will be required. We would welcome some further indication as to the time frame intended.
4	**In the short to medium term, a move to "paper light" courts.**
	The Society is supportive of this recommendation. Staging posts along the way will undoubtedly be required if the ultimate aspiration is to be achieved.
5	**The change programme to include a sequenced and co-ordinated roll-out plan, supported by a programme of education, training and advisory services. This work should be taken forward in consultation with the judiciary, professional bodies and court users.**
	This is agreed. We consider such a training programme to be absolutely essential. The Society would be happy to incorporate such training into its annual CPD Programme. We also see merit in the establishment of a Liaison Group with legal practitioners.
6	**The establishment of Judicial Engagement Groups (JEGs) to ensure every level of judge takes part in the change programme on a jurisdiction by jurisdiction basis.**
	This recommendation is noted and agreed.

7	**The setting up of a Litigant in Person Focus Group to give thought to the organisation and funding of this element of the reforms.**
	Given the increasing numbers of Litigants in Person in the justice system the Society considers the creation of such a Group as essential.
8	**Wi-Fi access to be set up in the Royal Courts of Justice (RCJ) and in Laganside Courthouse as a matter of urgency.**
	The Society understands that arrangements for secure Wi-Fi access for legal practitioners are at an advanced stage in the RCJ and in Laganside Courthouse and should be launched shortly.
9	**A designated courtroom in the RCJ to be forthwith equipped with the necessary technology to allow parties, by agreement, to run actions electronically.**
	The Society agrees with this recommendation. Such a development would allow pilots to be run and the gathering of an evidence base. It is also a visible commitment to the concept of digital courts.

CHAPTER 4 - ONLINE DISPUTE RESOLUTION (PAGES 41 - 55)

REC NO.	RECOMMENDATION
10	**A pilot scheme of voluntary ODR to be set up throughout Northern Ireland for money damages cases of under £5,000, excluding personal injuries over the value of £1,000. Legislation will be required to introduce such a step.**
	Given that such a scheme will require very considerable upfront investment, the Society considers that the outworkings of ODR schemes in other jurisdictions should be thoroughly tested and reviewed before any pilot scheme is considered for Northern Ireland. We consider that ODR recommendations should be framed with an individual's access to the internet considered alongside their general IT capabilities. Prior to any pilot an analysis of the needs and challenges likely to be faced by vulnerable groups such as the elderly and those with mental health difficulties should be undertaken. We further consider that any pilot should be held in the Small Claims Court only.

CHAPTER 5 - SINGLE ENTRY SYSTEM FOR CIVIL CASES? PAGES 56 -64)

REC NO.	RECOMMENDATION

11	**No introduction of a unified system or a single point of entry in the civil courts in this jurisdiction.**
	The Society welcomes this recommendation.

CHAPTER 6 - COSTS (PAGES 65 - 83)

REC NO.	RECOMMENDATION
12	**Scale costs to be introduced in the High Court with four levels depending on complexity of claim, with scope for exceptionality. This requires legislative change.**
	The Society would welcome further research in this area. We understand that some work has already been carried out by the Department of Justice in analysing legal aid costs in civil non-family cases. Scale costs set at appropriate levels for standard cases merit further consideration. However such arrangements are not appropriate for non-standard cases. In respect of both, satisfactory escape mechanisms are required. Our experience on the criminal side is that the devil is in the detail. Accordingly, pending formulation of a detailed proposal, the Society reserves its position.
13	**Increased use to be made of immediately measured and payable costs for interlocutory proceedings, such costs to be determined by the judge or Master hearing the interlocutory application.**
	The Society sees some merit in this recommendation. Some civil proceedings will last over a considerable period of time and involve a number of interlocutory applications. This recommendation if implemented should ease payment difficulties for practitioners.
14	**If scales and bands are not implemented, courts to consider the parties' costs estimates as part of case management.**
	The Society has considerable reservations about introducing a provision for detailed cost estimates as part of case management. Their introduction in England & Wales has led to an increase in the amount of subsidiary litigation there. Further analysis on the extent of any existing difficulties arising in Northern Ireland from their absence would be required.
15	**Amendments to the Rules of the Court of Judicature to be made to give effect to the first two of the above recommendations.**
	We had understood that in relation to recommendation 12 - introduction of scale fees - legislative change by way of Statutory Rule would if proceeded with be required and that this would be subject to formal public consultation in the manner in which changes to County Court scale fees are brought forward. We consider that recommendation 13 could be achieved by way of an amendment to the Rules of the Court of Judicature.

16	**An amendment to the Rules may assist with the implementation of the proposed third recommendation, though such a practice could be introduced under the court's existing powers of case management.**
	As indicated in our response to recommendation 14, the Society does not see the need for same in the absence of an evidence base showing the extent of current problems.
17	**The Civil Justice Council, if introduced, or the Lord Chief Justice, in the next twelve months to commission a group led by a High Court Judge to explore the possibilities for conditional fees, cost shifting and after the event insurance in light of experience elsewhere.**
	The funding arrangements for personal injury litigation (to include a consideration of the above matters) have been the subject of a number of consultation documents issued by the Department of Justice in recent years. The Department's final response to same is currently awaited. The Society's position is as contained in the attached response documents to those consultations.
18	**A new rule to be introduced to mirror, where appropriate, the English Civil Proceedings Rule 44 dealing with issue based and proportional costs orders.**
	The Society considers that the introduction of such a rule is unnecessary as Order 62 of the Rules of the Court of Judicature (NI) 1980 already provides for discretion in the making of costs orders relating to the parties' conduct or the issues raised.

CHAPTER 7 - THE OVERRIDING OBJECTIVE AN EFFICIENT AND TIMELY PROCESS (PAGES 84 - 96)

REC NO.	RECOMMENDATION
19	**A comprehensive comparison of our High Court and County Court rules with those in England and Wales be carried out by a body appointed by the Lord Chief Justice as a matter of urgency.**
	Given that our principal Rules in both the High Court and the County Court are over 35 years old the Society considers that such a comparison would be timely. We are mindful however that the two jurisdictions whilst sharing many features in common are also the subject of distinct differences. Careful consideration will be required to ensure that those English Rules which add cost to the system are not introduced into Northern Ireland. The Society would welcome an opportunity to provide input into the composition of any reviewing body.
20	**New pre-action protocols incorporating the best features of England and Wales's pre-action protocols and our own pre-action protocols be drawn up.**

	In line with recommendation 26, the Society considers that there should be a composite register of all existing Pre-Action Protocols in Northern Ireland. We would be supportive of a comparison being undertaken with those in England & Wales to ascertain what best features there might usefully be added to our own. We are mindful though that some of the English PAPs involve considerable front-loading which does not sit easily with a system of fixed costs. The Society would welcome an opportunity to provide input into this comparison exercise.
21	**Reviews of cases be initiated nine months after issue of the writ.**
	We note there is no discussion of this recommendation in Chapter 7 and seek further information with regard to same.
22	**There be one case management hearing (CMH) in most cases to take place within a specified timescale from entry of appearance, organised by the court at the very outset of any proceedings with such subsequent case management reviews as may be deemed necessary, and a pre-trial review (PTR) if required.**
	The Society is supportive of this recommendation.
23	**Failure to observe the time limits set out in the directions at CMH, unless leave is given prior to the time limit expiring, should usually result in heavy cost penalties.**
	The Society accepts that failure to observe a time limit in a Direction will on occasion require the imposition of a penalty but would welcome further clarification on what is meant by “heavy penalties”.
24	**No statutory or regulatory changes be put in place to implement CJ22 Implementation be speedily introduced through the exercise of the Court’s existing case management powers under Order 1 rule 1A of the Rules of the Court of Judicature 1980 and the inherent jurisdiction of the court.**
	This recommendation is noted and agreed.
25	**Order 14A be introduced into our Rules.**
	The Society is supportive of this recommendation.
26	**A composite register of all the Practice Directions be drawn up by the Office of the LCJ.**
	The Society considers this would be helpful - see also our response to recommendation 20.

27	**Any Practice Direction issued by a Judge or Master to require the imprimatur of the Lord Chief Justice.**
	The Society considers that this would assist with ensuring a consistent approach across all court divisions and tiers.
28	**An express requirement that leave is necessary in relation to interlocutory orders appealed from the County Court to be determined on paper save where the court hearing the appeal accedes to a request for an oral hearing or determines that such a hearing is necessary.**
	The Society agrees with this recommendation.
29	**Courts to encourage of the use of witness statements and the use of The Civil Evidence (Northern Ireland) Order 1997 at case management hearings.**
	The Society is not opposed to the use, where appropriate, of witness statements and the use of the 1997 Order.
30	**The Rules be amended to provide courts with the power to order the use of witness statements.**
	The Society is not supportive of there being a power to order the use of same. We are concerned that this will increase the cost of proceedings.
31	**The Rules be amended to provide for a plaintiff to make an offer of settlement within the same timescale as our present lodgement system. In the plaintiff equals or exceeds that offer, that plaintiff to receive, interest on his award at judgment rate and /or indemnity costs from the date of his offer.**
	The Society would welcome further engagement on this recommendation. Clarification is required on what would happen in the event of the plaintiff failing to equal or exceed the offer. We are also uncertain how such a system might operate in the County Court given existing scale cost arrangements.
32	**The Rules be amended to include a provision on the court's duty to manage cases mirroring CPR rule 1.4(2) in England and Wales.**
	The Society has no objection to this amendment.

CHAPTER 8 - MODERNISING THE COURT PROCEDURES (PAGES 97 - 111)

REC NO.	RECOMMENDATION

33	**Listing information to be added to the Twitter page recently set up to provide for the Northern Ireland judiciary to publish summaries of cases and judgments emanating from the Northern Ireland Court of Appeal.**
	The Society is supportive of this recommendation.
34	**NICTS to use YouTube as a means of outreach to personal litigants with explanatory videos.**
	The Society is supportive of this recommendation.
35	**NICTS to consult with the judiciary, the Office of the Lord Chief Justice and other stakeholders in considering the future development of a social media strategy.**
	This recommendation is noted and agreed. The use of social media will undoubtedly bring benefits but it also poses considerable risks as highlighted by the Australian concerns referred to in paragraph 8.25.
36	**Courts to insist on electronic transfers of damages wherever possible.**
	Subject to all necessary safeguards to prevent cyber-crime, the Society is supportive of this recommendation. This should allow for faster transfer of funds.
37	**A rule to be introduced to the effect that the period of a stay would ordinarily be a matter of days.**
	Given the opportunities resulting from electronic banking, the Society considers that the current period of a stay should be reduced. Views from insurers should assist in determining what is the appropriate length of time generally required.
38	**Children not to be referred to in the rules as "under a disability". They are children or young persons.**
	The Society is supportive of any amendment of the rules required to effect such a change.
39	**Persons with mental illness to be referred to as "protected persons".**
	The Society is supportive of any amendment of the rules required to effect such a change.
40	**The growing presence of personal litigants in the system be a consideration in the mind of all judgment givers.**
	Mindful of the points made by Lord Neuberger referred to at paragraph 8.61, the Society would welcome any steps which would improve the clarity of judgements.

41	**DJOs/Case Officers to be introduced.**
	The Society views this recommendation with some concern. In this jurisdiction particularly there is an imperative to ensure confidence in the administration of justice. Accordingly if these DJOs/Case Officers are to be introduced, they should be operationally separate and independent of the Executive. We would propose that this recommendation be parked until such times as research is available on the outworkings of the *Briggs* recommendations for England & Wales in this regard.

CHAPTER 9 - ALTERNATIVE DISPUTE RESOLUTION AND MEDIATION (PAGES 112 - 127)

REC NO.	RECOMMENDATION
42	**The Law Society, Bar Council, judiciary and all groups providing legal training, including the Institute for Professional Legal Studies in this jurisdiction to co-operate to provide better education for aspiring lawyers, practising lawyers and all the public on the benefits of mediation, and the flexibility available in terms of the appropriate mediation model and mediator.**
	The Society is willing to co-operate with others in ensuring the implementation of this recommendation. The Society administers the Dispute Resolution Service (the DRS) which comprises both solicitors and barristers and provides advice and information about mediation and delivers mediation services. Further information is available from www.mediatorsni.com. In January 2017 the DRS received accreditation from the Chartered Trading Standards Institute for consumer mediation under the European Consumer Mediation Directive.
43	**Compulsory mediation to be introduced and limited to a pilot scheme in low value cases up to £5,000 initially.**
	The Society is opposed to the idea that mediation should be made compulsory. This is a view supported by Lord Dyson who contributed a paper to a Conference held in Belfast and organised by the DRS and others in June 2014 to coincide with the 10th anniversary of the original judgement in the *Halsey* [2004] EWCA Civ 576 case. In his paper Lord Dyson emphasised that the voluntary nature of mediation still remained. The court should not compel it but should robustly encourage it. However if the outcome of the Review is that there should be a degree of compulsion, the Society considers that this should be piloted solely within the existing jurisdiction of the Small Claims Court.
44	**Otherwise mediation to remain optional**

	We refer to our response to recommendation 43.
45	**Courts to retain the right to impose costs sanctions where a party refuses to consider or participate in mediation without adequate explanation.**
	The Society does not object to this recommendation. We note the case of *PGF v OMFS* [2013] EWCA Civ 1288 which was heard in the English Court of Appeal and provided an opportunity for a detailed consideration of the state of mediation in England & Wales, particularly post *Halsey.* This case concerned a party who ignored the suggestion made by the other party that mediation should be undertaken. There was no actual refusal to mediate as there had been in *Halsey* but simply an ignoring of the suggestion. This proved to be extremely damaging for the party who had ignored an invitation to mediate. He was ordered to pay the costs on the basis that ignoring a request to mediate was tantamount to an unreasonable refusal.
46	**Rules, similar to the Civil Procedure Rule requiring the court to consider at every stage in proceedings whether an Alternative Dispute Resolution is appropriate, to be introduced.**
	The Society has no objection to this recommendation. In the event of same proceeding we anticipate that a consultation exercise to which the Society can contribute will be carried out to give effect to same.
47	**All barristers and solicitors undertaking mediation to be advised to undergo a form of training which incorporates the core skills of mediation. This is not obligatory.**
	The Society accepts the recommendation. However we consider some training of this type should be obligatory. All members of the DRS administered by the Society have already completed an approved form of training which incorporates the core skills of mediation.
48	**A Northern Ireland body, along the lines of the UK Civil Mediation Council or the Scottish Mediation Network, to provide accreditation for suitable forms of training for mediators.**
	The Society has pressed in the past for the formation of such a body and is willing to participate in any such body. In line with our response to recommendation 47 we consider training ought to be obligatory where a body is to be established to accredit that training.
49	**A Code of Conduct, similar to that introduced by the UK Civil Mediation Council, to be introduced by the equivalent body in this jurisdiction.**
	The UK Civil mediation Council's Code of good Practice requires adherence to a recognised Code of Conduct as do the Scottish Mediation Network. The DRS has its own Code of Practice which can be accessed from the DRS's website at www.mediatorsni.com. DRS members must also abide by the EU Code of Conduct for Mediators which can also be accessed at www.mediatorsni.com. Also the Bar of Northern Ireland's Mediation Scheme has a Code of Conduct which requires competence through training and accreditation.

50	**Barristers and solicitors acting as mediators to be required to adhere to this Code of Conduct, although responsibility for breaches of such a Code to be regarded as matters for discipline within the existing disciplinary procedures for each branch of the profession.**
	DRS mediators are required to adhere to the DRS Code of Practice and the EU Code of Conduct for Mediators. The Society accepts that breaches of these Codes are to be regarded as matters for discipline within the existing disciplinary procedures for each branch of the profession.
51	**A pro bono mediation service to be set up for those unable to afford mediators.**
	The mediation services offered by the DRS in respect of Consumer Mediations arising under the European Consumer Mediation Directive are delivered free of charge to the consumer.
52	**Legislation to require solicitors and barristers to advise any person intending to commence legal proceedings to give consideration to using mediation as an alternative means of resolving disputes.**
	The Society has some reservations about imposing a statutory duty on legal representatives to advise any person intending to commence legal proceedings to give consideration to using mediation as an alternative means of resolving disputes. Such an approach risks the provision of the advice becoming little more than a tick box exercise.
53	**The inclusion of the promotion of ADR within the overriding objective at Order 1 of our current rules.**
	The Society has no objection in principle to the inclusion of the promotion of ADR within the Overriding Objective contained in both the Rules of the Court of Judicature and the County Court Rules. In the event of same proceeding we anticipate that a consultation exercise to which the Society can contribute will be carried out to give effect to same.
54	**"Jackson ADR Handbook" be made available in Northern Ireland by the NICTS to all judges dealing with civil work.**
	This recommendation is a matter for the NICTS.

CHAPTER 10 - DISCLOSURE (PAGES 128 - 139

REC NO.	RECOMMENDATION

55	**Order 24 of the Rules of the Court of Judicature to be amended to introduce a system of disclosure based upon CPR 31.7(1) and the principles of "standard disclosure" and "reasonable search" in place of the Peruvian Guano test based on relevance, whereby the disclosing party would consider each document to see whether it supports his case, adversely affects his own or another party's case or supports another party's case.**
	The Society considers that the arguments between retaining the existing test and those for introducing the new test are finely balanced. However in light of the proposal in recommendation 152 to create a business hub, there would be considerable merit in harmonising as closely as possible, the test for disclosure in Northern Ireland as closely as possible with that in England and Wales.
56	**Specific provision to be made so as to enable the Court in an appropriate case to order specific discovery of documentation by reference to the Peruvian Guano test in circumstances where standard disclosure is inadequate or that the case is one where something more than standard disclosure is called for.**
	This is agreed.
57	**Order 24 of the Rules of the Court of Judicature to be amended to provide for automatic pre-proceedings disclosure of relevant documents, upon production by the plaintiff of a letter of claim of sufficient particularity as to enable the defendant to ascertain the nature of the case being made.**
	The Society is supportive of this recommendation.
58	**Such amendment to the Rules to be supplemented, if necessary, by a protocol or practice direction.**
	Noted. We anticipate that this amendment will be the subject of prior consultation to which the Society will be able to contribute.
59	**Amendment to be made to s. 31 of The Administration of Justice Act 1970 (c41) to remove the current limitation of pre-action disclosure to cases of personal injuries or death.**
	Noted. We anticipate that this amendment will be the subject of prior consultation to which the Society will be able to contribute.

CHAPTER 11 - EXPERTS (PAGES 140 - - PROBLEM SOLVING COURTS (PAGES 99 - 105)

REC NO.	RECOMMENDATION

60	**Only those experts who can prove that they have been properly trained and thus achieved an acceptable accreditation to be given permission to offer expert testimony.**
	The Society has no objection in principle to this recommendation but some further clarification will be required in relation to the practical outworkings of same if proceeded with.
61	**The judge (or Master) to determine at the first case management review (CMR) the necessity for any expert evidence.**
	The Society considers that the necessity for expert evidence is a matter for the parties. The intention to instruct an expert should of course be advised to the court at the earliest opportunity. If an expert has been unnecessarily retained this is a matter which goes to costs.
62	**If expert evidence is necessary, the court to be empowered to set a budget taking into account the issues involved and the amount at stake.**
	Such a requirement is already provided for at paragraphs 18-24 of Practice Direction 1 of 2015 issued by the Queen's Bench Division (Commercial). Subject to consultation to which the Society can contribute, the Society has no objection to this being extended to other Court Divisions.
62A	**Courts in appropriate cases, to encourage use of selection of joint experts.**
	The Society has no objection in principle to this recommendation. We anticipate that this is a matter which will emerge in the course of the comparison exercise referred to at recommendation 20.
63	**The extended use of concurrent evidence.**
	We note that concurrent evidence is envisaged at paragraph 79 of the Practice Direction 1 of 2015 referred to above. We are also aware that its use has been the subject of a Report by the English Civil Justice Council published in July 2016 and downloadable from https://www.judiciary.gov.uk/wp-content/uploads/2011/03/cjc-civil-litigation-review-hot-tubbing-report-20160801.pdf. As that Report raises some issues around procedural fairness it merits further consideration before any decision is taken with regard to the extended use of concurrent evidence.
64	**Greater use at the case management stage of the power to appoint of a court assessor or court appointed expert in dealing with highly technical issues.**
	This is noted and agreed.
65	**Increased use of disciplinary measures against any errant expert.**

	This recommendation reflects the contents of paragraphs 80-83 of Practice Direction 1 of 2015.
66	**A rule to provide for written questions to experts.**
	The Society has no objection in principle to this recommendation, provided it is subject to appropriate safeguards against abuse.

CHAPTER 12 - PERSONAL LITIGANTS (PAGES 151 - 171)

REC NO.	RECOMMENDATION
67	**Courts to invoke early case management hearings in all cases involving personal litigants (PLs).**
	The Society welcomes early case management hearings in cases involving PLs. Consideration might also be given to a "Memorandum of Understanding" style form to be signed by PLs (as well as potential McKenzie friends) at this review outlining how inter-action with the court and legal representatives will take place. This might cover a range of issues where difficulties currently arise e.g. contacting the court, the nature and tone of the engagement, preparation of documents etc.
68	**All judges to be familiar with and guided by the current Equal Treatment Bench Book with reference to PLs under a disability.**
	The Society notes and agrees with this recommendation. We are also mindful that not all PLs have English as their first language. Judges should be alert to language barriers. The Equal Treatment Bench Book recognises that proceedings may have to adjourn in order to ensure that a mutually acceptable interpreter is able to assist the PL. The Bench Book alludes to the use of free online translation services. However the Society would have some concerns regarding the reliability of these services to adequately assist PLs. Consideration needs to be given as to who will fund a standardised translation service. Currently it is the responsibility of each party to have their own translator with little to no judicial scrutiny as to the suitability of a translator. Quality can be maintained through the use of professional interpreters who are vetted, qualified and trained.
69	**A specific power to be introduced into the Rules of the Court of Judicature Northern Ireland 1980 to allow the court to direct that, where at least one party is a litigant in person, the proceedings be conducted by way of an inquisitorial form of process.**
	The Society has some concerns with this recommendation. The Society takes the view that there is a fine balance to be exercised between ensuring PLs are given practical and emotional support by the court system and not legal advice during their proceedings. The scale should not tip whereby it appears to the legally represented client that they are being unfairly treated and penalised for having lawyers.

	The Society supports the views expressed by Mr Justice Horner in *Smith & Hughes v Black* [2016] NICh 17 where he says the following:- "Master Matthews said in Jones v Longley [2016] EWHC 1309 (CH [56]): "There are not in our system two sets of rules, one for those who employ lawyers, and one for those who do not. There is only one set of rules, which applies to everyone, legally represented or not. The courts cannot and do not modify the rules for those who are not represented …" " He went on to say that although at the margins a personal litigant may be offered a little more leeway than a party who is legally represented, "there are no special rules for litigants in person as compared with those litigants who are represented".
70	**Where at least one party is unrepresented, counsel or solicitor to develop a practice (if necessary subsequently enforced by a rule change) of:** **Identifying themselves by name when announcing their appearance before the court.** **Requiring the represented party to send to any litigant in person legal authorities which are adverse to the represented party's case.** **Requiring the represented party to send to any litigant in person the form to be filled in to apply to be assisted by a McKenzie Friend, together with the practice note in relation to McKenzie friends and any associated documents.**
	The Society has no objection to the various elements comprising this recommendation.
71	**Invocation of the Australian model of an "unrepresented co-ordinator" with the appointment of a lawyer by the Northern Ireland Courts & Tribunals Service (NICTS) whose sole function is provide paperwork and logistical assistance to PLs.**
	The Society seeks clarification as to how this recommendation (and the one following) sits with those contained in recommendations 150 – 153 of the Family Justice Review. As stated in our response to these recommendations in the FJR we are mindful that there are already a number of free legal advice centres such as the Housing Rights Service and the Law Centre which already provide advice helplines. There is a real need to ensure that these services are maintained within the voluntary sector and that any advice line / centre set up by the NICTS works in cooperation / collaboration with existing services. It may be that the "unrepresented co-ordinator" would perform a much more limited role.
72	**The unrepresented co-ordinator to co-ordinate an online advice line and to provide accessible and easy to understand guidance for personal litigants in the county court and the High Court.**

	We refer to our response to recommendation 71.
73	**The Legal Services Agency to introduce a similar "face to face" service for limited assistance as presently exists in England.**
	This is a matter for response by the Legal Services Agency.
74	**Strong encouragement and assistance to be given by the Law Society to projects such as that implemented by Ulster University to assist personal litigants.**
	Noted.
75	**NICTS to build on the research currently being carried out into PLs and to obtain accurate background statistical evidence on PLs in our civil justice system.**
	Agreed.
76	**Rigorous data recording practices to be established across each tier of the civil court system and in each geographical division**
	The Society considers that the recording and collating of rigorous data is essential to inform future research on this issue. This is in line with best principles of evidence-based policy making and an approach which looks at the system holistically.
77	**Provision of feedback from PLs in a formal questionnaire issued at all tiers to measure their experience and suggested improvements.**
	Agreed.
78	**NICTS to revisit its current website to establish a single authoritative website providing an online objective information hub in civil law cases with an added emphasis on plain and simple language and support given to vulnerable people.**
	The Society welcomes this approach but has concerns that improving website access might lead to a reduction of "over the counter" support. Vulnerable PLs often do not have access to computers or ability to process information via the web. Accordingly this recommendation needs to be in tandem with, not instead of, public counter services.
79	**Paperwork and processes to be designed with the layperson in mind. NICTS to conduct a review of current forms to ensure they are appropriately plain and comprehensive for all court users.**
	We note and agree with this recommendation.
80	**Vulnerable groups, such as people with mental health problems, to be signposted to appropriate services.**

	We note and agree with this recommendation.
81	**The current High Court Guidance to Personal Litigants to be redrafted in a format and language that are more readily understood by PLs. A similar document should be provided for the county court.**
	We note and agree with this recommendation.
82	**A move away from the conventional printed fact sheets provided by NICTS and a more interactive approach to be adopted.**
	Please see response to recommendation 78.
83	**The civil courts in Northern Ireland to have powers similar to those in England and Wales in relation to civil restraint orders.**
	The Society is supportive of this recommendation. Should it be proceeded with, we anticipate that there will be a consultation exercise carried out to which the Society can contribute.
84	**The abatement of court fees for all litigants to be reconsidered at least on the basis that fees for appeals be not waived.**
	The Society is supportive of this recommendation. We are concerned that the current arrangements encourage vexatious applications and may indeed be discriminatory against represented applicants in similar financial circumstances.
85	**Steps to be taken by NICTS to publicise the availability of pro bono assistance and alternative remedies for resolution of disputes, including mediation or negotiation.**
	The Society has no objection to this recommendation.
86	**A panel of court appointed mediators to be drawn up to assist where PLs are involved.**
	The Society has no objection in principle to this recommendation but would require further details as to the outworkings of this proposal.
87	**Both the Bar and the Law Society to draw up a joint protocol governing the approach to be adopted to personal litigants, ensuring that best practice for working with lay people is provided consistently.**
	The Society considers that such a joint protocol would be beneficial and will engage with the Bar as to its development.
88	**Implementation in Northern Ireland of the equivalent to s. 194 of *The Legal Services Act 2007* permitting pro bono cost orders to be made where a client represented pro bono wins their case.**

	The Society welcomes this recommendation.
89	**Court staff, lawyers and judges to receive regular training for dealing with problems with PLs. NICTS to consider training and delegating one staff member in each civil court office to deal with such issues.**
	The Society supports this recommendation. The Society has already included events in relation to dealing with PLs in its annual CPD Programme. In relation to the NICTS consideration should be given to the provision of a designated email address for PLs in court offices.
90	**The results of the current research being undertaken in Northern Ireland on PLs to be specifically considered by the Civil Justice Council and further recommendations made.**
	The Society agrees with this recommendation.

CHAPTER 13 - McKENZIE FRIENDS (PAGES 172 - 179)

REC NO.	RECOMMENDATION
91	**The principles underlying the right to reasonable assistance, the conduct of litigation and the grant of rights of audience to remain unchanged.**
	The Society agrees that these principles, the conduct of litigation and the grant of rights of audience should remain unchanged.
92	**These principles and the appropriate procedure to be codified in an amendment to court rules.**
	The Society has certain reservations about the above being codified into an amendment to court rules. We are of the view that setting out expectations in guidance ensures that the right balance is maintained between giving judges the power to manage their own courts and encouraging supportive friends or colleagues to assist PLs. The new guidance needs to ensure that it does discourage the PL's family or friends from offering moral support and other assistance by inadvertently creating the impression of a regulatory environment by virtue of codification. The one exception to the above approach is that in relation to the proposed prohibition on remuneration referred to in recommendation 96 below. It should be incorporated into court rules. This should help prevent the inadvertent creation of a new unregulated branch of legal practice.
93	**A Code of Conduct for McKenzie friends to be drawn up.**

	The Society has some reservations about the need for a separate Code of Conduct as this might deter family and friends from acting as McKenzie Friends and might also suggest that McKenzie Friends are quasi-regulated. We consider their role is best dealt with by way of Guidance. It will be important that the PL is included in this process as s/he needs to understand what their McKenzie Friend can and cannot do. The guidance should be furnished to both of them and they should both sign to say that they have understood it.
94	**McKenzie Friends to be required to complete standard form notices in the case of reasonable assistance, including acknowledgement of not having received remuneration for services, confidentiality and agreement to a Code of Conduct.**
	The Society agrees that McKenzie Friends should be required to complete a standard notice which asks PLs and McKenzie Friends to provide information to the court. This should help the court to best manage the exercise of the right of reasonable assistance and the granting of special rights. The same notice should be used in all courts and available in multiple languages. This notice should confirm that they have not received remuneration and that they understand their duty of confidentiality. This duty may differ depending on the case and the court they appear in. When the judge explains what the duty in the case in, s/he should also explain the consequences of failing to observe the duty.
95	**An application for rights of audience or the right to conduct litigation to be made formally to the court and supported by evidence.**
	The Society supports this recommendation.
96	**The 2014 Practice Direction to be altered and a prohibition on remuneration of/payment of fees to McKenzie Friends, regardless of the extent of the role being played, save for the payment of necessary expenses such as travel costs.**
	This is agreed – see response to recommendation 92.
97	**The nomenclature of the McKenzie Friend to remain unchanged.**
	The Society has no strong views on this recommendation.

CHAPTER 14 - DISABILITY IN THE CIVIL COURTS (PAGES 180 - 204)

REC NO.	RECOMMENDATION

98	**Prescribed forms in civil and family proceedings to be used to identify if a party to proceedings requires adjustments to be made to facilitate their participation in proceedings and attendance at court.**
	Noted and agreed.
99	**The Department of Justice (DoJ) and the Northern Ireland Courts & Tribunals Service (NICTS) to develop systems to capture information on the number of disabled persons in the justice system to inform policy development and support best practice.**
	Noted and agreed.
100	**NICTS to take immediate steps to complete the programme of DDA works to the Royal Courts of Justice and also carry out a disability access audit at Laganside Courts and any other court locations not previously included in the disability access audit.**
	Noted and agreed.
101	**NICTS and DoJ to carry out a comprehensive review of web-based information and guidance to identify and implement all changes necessary to ensure full compliance with accessibility guidelines/standards.**
	Noted and agreed.
102	**NICTS to upgrade its website to include links to various disability support organisations The Northern Ireland Law Commission recommendations to be adopted and the relevant department(s) to expedite implementation of the Civil Evidence Bill.**
	The Society agrees that the NICTS website should be upgraded to include links to various disability support organisations. The Society supports the expedited implementation of the Civil Evidence Bill to implement the recommendations of the Northern Ireland Law Commission in this area.
103	**The use of intermediaries to be extended to support those with communication difficulties in the civil and family courts.**
	The Society is supportive of this recommendation.
104	**The principles set out in Galo v Bombardier to be applied in all cases involving those with a disability.**
	The Society is supportive of this recommendation.

105	**Closer liaison voluntary support organisations in the provision of training to judges, the legal profession and all frontline staff who are dealing with physically disabled and hearing and visually impaired people attending court.**
	Please see response below to recommendation 110.
106	**NICTS to consider hosting the Royal College of Speech and Language Therapies "My Journey My Voice" Exhibition at a public event organised by NICTS to promote and heighten awareness of communication difficulties.**
	Noted and agreed.
107	**The Law Society to arrange training for solicitors in physical disability, hearing and visual awareness problems and that a list of solicitors who have undergone such training be made available so that those who are physically, hearing and/or visually impaired can make an informed choice regarding legal representation.**
	Please see response below to recommendation 110.
108	**NICTS to liaise with professional technical officers in RNIB, SENSE and RNID when considering technology requirements to support visually impaired and deaf persons to participate fully in court proceedings.**
	Noted and agreed.
109	**Judicial Studies Board, Bar Council, Law Society and NICTS to have readily and easily available for consultation relevant literature on the disabled.**
	Please see response below to recommendation 110.
110	**The Bar Council and Law Society to follow example of the judiciary and appoint a member in charge of disability issues.**
	In October 2016 the Society launched a new group entitled "Legally Able" to raise awareness of disability issues amongst solicitors and their clients. Membership of the group is open to any person who is on the Roll of Solicitors in Northern Ireland, disabled colleagues and those with experience of working with or otherwise supporting disabled colleagues, clients, family or the wider community. The new group will inter alia consider what additional awareness raising/training is required as proposed by recommendations 104, 105, 107, 109 and 110.

CHAPTER 15 - COURT OF APPEAL (PAGES 205 - 218)	
REC NO.	**RECOMMENDATION**

111	**Leave to appeal to be required in every appeal to the Court of Appeal.**
	In order to ensure increased scrutiny, the Society has no objection to this recommendation.
112	**Application for leave to appeal to be made in writing and determined by a single judge. The decision may be to grant leave on some or all grounds or to refuse leave.**
	This is agreed.
113	**A party who has been refused leave to appeal by a single judge on a written application to be able to proceed to an oral hearing before a single judge for leave to appeal.**
	This is agreed.
114	**There to be no right of appeal against a grant or refusal of leave by the single Judge.**
	This is agreed.
115	**The higher threshold adopted for Upper Tribunal appeals to extend to all second appeals and to all tribunal appeals to the Court of Appeal.**
	This is agreed.
116	**If CJ115 is not implemented as a universal threshold based on that presently applied to Upper Tribunal appeals, the Order 60B alternative to Case Stated to be available for all appeals from tribunals and the magistrates' court and county court on points of law to the Court of Appeal.**
	This is agreed.
117	**Appeals from the High Court on interlocutory matters as well as substantive appeals by way of "re-hearing" not only to require leave in all cases under the leave to appeal process outlined above but there to be a raised threshold for appeal to "a real prospect of success" or "some other compelling reason" for the Court of Appeal to hear the appeal.**
	The Society has no objection to this recommendation.
118	**Applications to appeal out of time to be in writing before a single judge determining the application for leave to appeal with the same right to an oral hearing before a single judge in the event of refusal. Cases where the appeal otherwise appears to have merit and matters turns on delay should be permitted access to the full court for a determination.**

	Agreed. The Society welcomes the retention of the principle of fairness.
119	**Where the single judge finds that there are no grounds to extend time but leave would otherwise be granted, the application should proceed to the full court.**
	As at recommendation 118, the Society welcomes the retention of the principle of fairness.
120	**There to be a system of early case management hearings by a single judge of all cases where leave has been granted.**
	The Society is supportive of this recommendation.
121	**Time slots to be allocated for case management hearings at which all parties attend. Directions will be issued by the single judge as to the conduct of the appeal. The same single judge should, as far as is practicable, engage in the case management of any particular case.**
	The Society is supportive of each of the three elements making up this recommendation.
122	**The single judge to fix not only the time allotted to the hearing of the appeal but also the periods within the allotted time that each party has to make submissions and replies so that a hearing timetable is produced in every case. Case management hearings involving personal litigants to be given longer time slots and more case management hearings.**
	Agreed. The proposal for longer time slots and more CMHs in cases involving PLs is welcomed.
123	**The prospects of mediation to be a consideration on any leave being granted to appeal.**
	This is agreed.
124	**The identity of the necessary documents relied on by all parties and the collation of all those documents to be an essential task in the case management process.**
	This is agreed.
125	**A practice direction to spell out that non-compliance with directions by a party or by solicitors may result in costs being ordered against the party in default or against the solicitor if the fault lies on their part or of their counsel or of their expert witnesses. Default costs may be required to be paid within a stated time in advance of the substantive hearing and confirmed by receipt from the receiving solicitor.**

	The Society has no objection in principle with this recommendation but would welcome an opportunity to contribute to the discussions on the specific content of the proposed Practice Direction.
126	**Removal of the protection of the legally aided party responsible for wasted costs.**
	The Society has no objection to this recommendation.
127	**Extension of personal liability for wasted costs to counsel.**
	The Society has no objection to this recommendation.
128	**Extension of the penalty in costs where oral evidence was not reasonably necessary under Order 64 Rule 10A to those cases where it was not reasonably necessary to give any evidence orally.**
	The Society would welcome some further information on the frequency of oral evidence in the Court of Appeal as it is our understanding that same is rarely called.
129	**A Practice Direction to state that the single judge may consider the costs that have been incurred in the dispute and the costs that are likely to be incurred on any appeal in making case management decisions and for that purpose may require the parties to furnish such costs or estimated costs.**
	The Society would welcome some further information on any current difficulties being experienced by the Court of Appeal before deciding whether a Practice Direction is required.
130	**Applications for leave to appeal to the UK Supreme Court (UKSC) to be made in writing and the grant or refusal of leave be made by the issue of an order, with the Court of Appeal convening an oral hearing only where it is considered necessary to do so.**
	The Society has no objections to this recommendation.
131	**The grant of leave to appeal to the UKSC to be granted where the application, in the opinion of the Appeal Panel, raises an arguable point of law of general public importance which ought to be considered by the UKSC Court at that time.**
	The Society has no objection to this recommendation.
132	**A Lord Justice to be given overall management of all the areas of civil work. That Lord Justice shall serve on the Civil Justice Council.**
	Noted and agreed.

133	**Development of the process of electronic service of all documentation.**
	Given that Practice Direction No.1 of 2016 permits electronic submission of skeleton arguments and schedules thereto, along with authorities, the Society sees no reason why this facility should not be developed further to include all other documentation required for the appeal.

CHAPTER 16 - THE COUNTY COURT, DISTRICT COURT AND SMALL CLAIMS COURT (PAGES 219 - 237)

REC NO.	RECOMMENDATION
134	**Not less than three Civil (and Family) Centres to be set up given over exclusively to the hearing of civil bill and equity cases provided sufficient judges are made available.**
	The Society set out a number of principles on access to justice and the importance of an effective court estate during the recent public consultation on court closures. Under Section 68A of the Judicature (Northern Ireland) Act 1978 the Department of Justice is under a statutory duty to provide an efficient and effective system for the operation of the courts and to provide appropriate services to do this. Whilst there was public discussion concerning the distinction between buildings and services during the Consultation, it should be emphasised that local courthouses are the hubs of main market towns and serve significant numbers in outlying rural communities. The Society felt that the proposals pursued a strategy of centralisation in larger urban areas which is at odds with the principle of access to justice in local communities. In this context, a courthouse is more than a 'building'. They are places which local communities see as integral to their local infrastructure. Locations of courts were planned to ensure access to justice is served through the provision of welcoming and convenient locations to the population of Northern Ireland. Delivering on this statutory duty requires an overview of the business volumes within the courts, the facilities in place to aid the efficient resolution of cases and the availability of the judiciary to deal with case listings and achieve resolution. In our response to the DoJ Consultation, the Society provided some examples whereby additional travelling time would create significant difficulties in areas where transportation was less accessible and that a robust impact assessment should have interrogated these risks in more detail. We welcome the Lord Justice's emphasis on courts working in the interests of community and to seek to look at ways in which their value and operational efficiency can be maximised. We believe the decision by the Minister of Justice to retain the strength of the current court estate provides ample opportunity to achieve this in family cases whilst protecting access to justice. The Society is supportive of a review of

	the utilisation of the court estate in civil proceedings to maximise the benefits of reforms introduced in this Review and will listen to any case made for dedicated civil justice centres and how these would operate to improve the current system.
135	**Not fewer than five county court judges to be assigned for three year periods to deal exclusively with civil and equity matters in these Centres.**
	We refer to our response to recommendation 134.
136	**Provided CJ134 and CJ135 are implemented, the county court civil jurisdiction to be raised to £75,000, subject to CJ137 below.**
	The Society considers that in the absence of detailed research and analysis in relation to the effects and outworkings of the 2013 increase in the jurisdiction of the County Court, such a change is premature and accordingly that this recommendation should not proceed at this time. One of the key features of the County Court in Northern Ireland is that it provides a forum for the practical and efficient disposal of the bulk of civil business. Accordingly the likely impact on consumers must also be considered – in particular concerns with regard to the potential for lower awards of damages. Whatever jurisdictional changes are agreed in the future, it will be essential to ensure the maintenance of a service to consumers equivalent to that currently provided in the County Court. To achieve this aim, any increase will therefore require the investment of adequate resources to be put in place prior to its coming into operation. It is the Society's view that the larger the increase in the jurisdiction of the County Court, the greater will be the need for: - an increase in the judicial complement - an improvement / replacement of the facilities comprising the existing court estate. There are existing strains on Court House accommodation at a number of the larger regional hearing centres – packed waiting areas, inadequate consultation rooms and facilities, absence of adequate technological capacity, and car parking difficulties. - a number of practical and procedural changes in the operation of the County Court. (As the comparative lack of formality is viewed as an advantage of the present arrangements, these have the potential to lead to greater procedural complexity in this court tier.) Issues will arise with regard to length of hearings and the increased use of expert evidence at this court tier. - increased fees for the undertaking of litigation in the County Court.
137	**The county court jurisdiction not to include defamation cases over the value of £10,000, judicial review cases, most clinical negligence cases and other cases which are certified by the county court judge or Master of the High Court as of particular importance or of exceptional complexity.**
	In the event of any increase to the jurisdiction of the County Court, the Society is of the view that the matters listed in this recommendation should not be included within the

	jurisdiction of the County Court. Consideration might also be given to reserving to the High Court certain industrial diseases such as those involving asbestos-related diseases, dermatitis and hand-arm vibration. These cases regularly involve specialist medical and scientific experts.
138	**A radical uplift in the level of the equity jurisdiction.**
	Subject to the caveats, raised in our response to recommendation 136, the Society has no objection to the equity jurisdiction of the County Court being revised.
139	**The power of removal from the county court and district court to the High Court to be vested in county court and district judges. Remittal from the High Court to remain with the Master. Appeals on these matters to be paper exercises before a High Court Judge with a discretion to order an oral hearing on request.**
	The Society has no objection in principle to this recommendation.
140	**Power to order relief under *The Administration of Justice Acts 1970* and *1974* to be extended to county court judges.**
	The Society would welcome further clarification on this recommendation given that it is stated it should not be exercisable by a judge or Master.
141	**Defendants to be required to answer a questionnaire setting out the defence before the Certificate of Readiness is granted.**
	The Society is supportive of the views expressed at paragraphs 16.40 and 16.41 in relation to this recommendation.
	The pre-action protocol to be amended as follows:
141A	• **paragraph 4 to state that a letter of claim should "contain details of financial loss incurred, even where such details are necessarily provisional".**
	Subject to the Society having an opportunity to provide input to the consultation exercise to be carried out of any amendment of the pre-action protocol, the Society has no objection to this recommendation.
142	• **paragraph 9 to provide for the plaintiff to issue applications for pre-action disclosure where there is no reply from the defendant within 21 days.**
	Please see our response to recommendation 141A.
143	• **paragraph 9 of the protocol to be amended so that "the plaintiff is entitled to proceed to issue court proceedings", paragraph 12 to provide that if the defendant denies liability or alleges contributory negligence, they must enclose with the letter of reply all (rather than the current wording of any) documents in their possession.**

	Please see our response to recommendation 141A.
144	• **A requirement for a non-exhaustive list of disclosure documents be annexed to the protocol. Where such documents do not exist, the defendant should complete a form for standard disclosure.**
	Please see our response to recommendation 141A.
145	• **paragraph 10 to be amended to state that: "The defendant's solicitor/insurer to have a maximum of 3 months from the date of acknowledgement of the letter of claim to investigate without leave of the court for an extension in exceptional circumstances."**
	Please see our response to recommendation 141A.
146	• **The defendant's insurer/solicitors to reply within three months stating whether liability is admitted, addressing causation and The Limitation Act 1980 if relevant. If liability is denied, the defendant's solicitor/insurers to state with clarity the defendant's case.**
	Please see our response to recommendation 141A.
147	• **Insertion of an objective to include the promotion of rehabilitation treatment for best litigation practice.**
	Please see our response to recommendation 141A.
148	**Greater use to be made of online technology, email or telephone conferences for straightforward reviews, adjournment applications and date fixing subject to the right of the judge to direct or the parties to request an oral hearing where appropriate.**
	Subject to the concerns expressed in our response to recommendation 2 with regard to the adequacy of current technological capability, the Society is strongly supportive of this recommendation.
149	**A single tier of 'civil judges' of the county court exercising the full civil jurisdiction of the county court.**
	Pending completion of the research and analysis referred to in our response to recommendation 136, the Society reserves its position on this recommendation.
150	**If CJ149 above is not implemented, an increase to the district judge's jurisdiction to £25,000.**
	Pending completion of the research and analysis referred to in our response to recommendation 136, the Society reserves its position on this recommendation.

151	**An increase in the small claims court jurisdiction to £5,000, with personal injury and road traffic cases excluded.**
	Whilst welcoming the proposal to exclude personal injury and road traffic cases from any increase in the jurisdiction of the Small Claims Court, the Society is opposed to a general increase in its jurisdiction to £5,000.

CHAPTER 17 - A BUSINESS HUB FOR CHANCERY, COMMERCIAL AND JUDICIAL REVIEW (PAGES 238 - 243)	
REC NO.	**RECOMMENDATION**
152	**A new business hub comprising suitable cases in the Commercial, Chancery and Judicial Review courts to be set up, serviced by four or five designated High Court Judges with a senior judge having overall responsibility for listing and designation.**
	The Society is supportive in principle of this recommendation. For it to be successful it will need to be properly resourced in terms of court staff and judicial complement. It is noted that in relation to the latter, this presupposes a freeing up of existing High Court Judges as a result of the recommendation to increase the jurisdiction of the County Court and also through a reduction of equity business in the High Court. The Society is opposed to an increase in the jurisdiction of the County Court and has reservation about the likely increase in the use of the equity jurisdiction of the County Court.
153	**Such claims to be allocated to a designated judge at the time of the first CMC or earlier if necessary.**
	To ensure efficiency the Society agrees that allocation to a designated judge who will retain carriage of the case should happen at the time of the first CMC or earlier if possible.
154	**Judicial Review cases in appropriate instances to be assigned to specialist judges.**
	The Society sees considerable merit in this recommendation. As stated in paragraph 17.7 it should not only ease the current workload of the Judicial Review Judge but also increase the experience, expertise and approach to the whole concept of judicial review.
155	**A Practice Direction to be drawn up by the Commercial, Chancery and Judicial Review Judges outlining, in a simple procedure, that:** • **Priority will be given to exceptional cases which are prepared to adhere to limited disclosure, pleadings, interlocutories, etc. with the aim of full disposal within days or at most weeks of the issue of proceedings.** • **Special measures will be adopted for cases calculated to last over five days to reduce where possible the hearing time.**

	Provided that the requirements of justice are met, the Society has no objection to this recommendation. We would welcome the opportunity to input into the content of any proposed Practice Direction.

CHAPTER 18 - THE CHANCERY COURT (PAGES 244 - 257)	
REC NO.	**RECOMMENDATION**
156	**The county court to have a designated equity judge to manage and hear all equity business in Northern Ireland.**
	We refer to our response to recommendation 138.
157	**Power to be given to refer matters of disputed valuation to Lands Tribunal, and Lands Tribunal to be given the necessary jurisdiction to determine such references.**
	We refer to our response to recommendation 217.
158	**The Master to be given power to hear applications for delivery of a solicitor's file where there are no points of legal principle (a role similar to rule 4.1(m) of the Civil Procedures Rules which empowers the court 'to take any other step or make any other order for the purpose of managing the case and furthering the overriding objective').**
	The Society has no objection to this recommendation.
159	**The case management process to be streamlined to have one early, detailed review to manage all issues to trial of the action.**
	The Society is in favour of streamlining the case management process but queries whether it will always be possible for all issues to be managed by one early detailed review. Provision should be made for referral back where issues arise in the course of the litigation.
160	**Courts to strongly encourage the merits of early resolution through mediation and early neutral evaluation.**
	The Society is supportive of such an approach provided that same is not made compulsory.
161	**A process similar to Order 14A to be introduced for determination of points of law.**
	The Society sees considerable merit in this recommendation.

162	**Discovery to be limited in cases where there is a limited factual dispute.**
	In the absence of evidence to the contrary, the Society considers that existing provision in relation to discovery is adequate to deal with any issues arising.
163	**Increased judicial management of the discovery process, to consider whether discovery should be limited to certain issues, or to ensure that discovery is in fact necessary.**
	The Society is uncertain as to how this recommendation sits with recommendation 159.
164	**A presumption that there be no general discovery in originating summons cases.**
	The Society understands this reflects the current position in originating summons cases.
165	**Introduction in the Chancery Court of scale costs with four levels depending on complexity of claim, with scope for exceptionality. The case would be assigned to one of the four levels at the initial review, with scope for revision later, and scope for taxation within the bands and scope for taxation in exceptional cases.**
	Please see our response to recommendation 12.
166	**Increased use to be made of immediately measured and payable costs for interlocutory proceedings.**
	Please see our response to recommendation 13.
167	**If scales and bands are not implemented, the Court to consider the parties' costs estimates as part of case management, to ensure that directions concerning the scope of discovery, expert evidence and trial management are proportionate to the value of the case.**
	Please see our response to recommendation 14.
168	**The Office of the Lord Chief Justice to use Twitter to advise of judgments and to provide a synopsis and link to each judgment given to complement the existing practice of publishing judgments on line and providing judgment summaries in appropriate cases of public interest in the Chancery Division.**
	Noted and agreed.

CHAPTER 19 - THE COMMERCIAL DIVISION (PAGES 258 - 271)	
REC NO.	**RECOMMENDATION**
169	**Each case in the commercial list to be subject to:** • **An initial directions hearing shortly after entry into the List;** • **A case management conference after the completion of pleadings;** • **A pre-trial review around four weeks before hearing.**
	The Society is supportive of this recommendation.
170	**A requirement for parties to exchange letters setting out their proposals/objections to mediation.**
	We refer to our response to recommendation 45.
171	**Fast tracking of short uncomplicated net issue cases.**
	The Society is supportive of this recommendation. Whether such a scenario is applicable is probably best considered by the parties immediately prior to any Case Management Hearing and dealt with thereat.
172	**Fast tracking of cases where mediation has failed.**
	The Society has no objection to this recommendation. The extent of any ability to "fast track" will of course be dependent on the stage in the litigation process at which mediation has taken place.
173	**More frequent use of Early Neutral Evaluation.**
	The Society has no objection to this recommendation. It complements an outstanding recommendation from the Stutt Report on the *Review of Access to Justice II* in relation to the Society and the Bar co-operating to promote the use of ENE by their members and to consider the merits of establishing panels of experienced lawyers to provide an ENE service and a protocol for their instruction.
174	**The use of automated search technology in complex disclosure issues.**
	This is a developing area where further education and training is required.
175	**Parties to be encouraged to closely co-operate during the early stages of the disclosure process.**

	The Society accepts this recommendation as we understand it to reflect the position generally observed by parties in commercial litigation.
176	**Implementation of the concept of a disclosure plan at the outset of the disclosure process.**
	The Society has no objection in principle to this recommendation in appropriate cases.
177	**Implementation of the concept of a written statement of issues by any party seeking disclosure.**
	The Society has no objection in principle to this recommendation in appropriate cases.
178	**Amendment of Commercial Practice Note 01/03 to provide for Scott Schedules in suitable interlocutory applications.**
	Such Schedules help narrow the issues. Accordingly the Society is supportive of this recommendation.
179	**The commencement of the Online Dispute Resolution Advisory Services in low value claims.**
	We refer to our response to recommendation 10.

CHAPTER 20 - JUDICIAL REVIEW (PAGES 272 - 280)

REC NO.	RECOMMENDATION
180	**Judicial review applications which have as their subject matter issues which are within the jurisdiction of more specialist courts to be transferred to those courts for hearing.**
	The Society sees considerable merit in this recommendation.
181	**Such transfer to occur at an early stage for case management in that court.**
	The Society seeks further clarification as to what is meant by “at an early stage” e.g. is it intended that all applications for leave should be dealt with by the Judicial Review Judge and only after leave is granted would a decision be taken on transfer.
182	**The criminal/civil causes distinction in judicial review to be abolished by a statutory amendment to *The Judicature (Northern Ireland) Act 1978*.**
	The Society has no objection to this recommendation.

183	**The judicial review pre-action protocol to be revised.**
	The Society has no objection to this recommendation but understands that the current Pre-Action Protocol operates well in practice.
184	**Leave to apply for judicial review to be granted on the papers with an oral hearing arranged only if the judge is minded to refuse leave. There should <u>not</u> be a facility to refuse leave on the papers.**
	Agreed.
185	**A greater emphasis on compliance with the pre-action protocol and costs penalties where it is not adhered to.**
	The Society considers that this recommendation should be included within the scope of the Review proposed in recommendation 183.
186	**Unless a special request for more time is sought and granted, leave hearings not to last beyond 11 o'clock on any morning.**
	Court statistics should reveal how workable this recommendation would be in practice.
187	**A practice of not listing more than two leave hearings on a day to be instituted.**
	As at recommendation 186, Court statistics should reveal how workable this Recommendation would be in practice.
188	**The "promptness" requirement for judicial review proceedings to be abolished.**
	In relation to the 2015 the Department of Justice (DoJ) consultation on "promptness", there was a general consensus amongst respondents (including the Society) that the abolition of this requirement would provide greater certainty, simplicity, openness and transparency to all involved in judicial review proceedings. We understand the proposal was referred to the Northern Ireland Executive for approval and the DoJ was then to refer to the Court of Judicature Rules Committee.
189	**Special day(s) to be set aside for reviews and hearings of cases involving personal litigants.**
	Subject to an analysis of the likely effect this would have on the ordinary list, the Society has no objection to this recommendation.
190	**The production by the Northern Ireland Courts & Tribunals Service of a guide for personal litigants and others who may use the Judicial Review Court.**

	Agreed.
191	**Greater judicial encouragement of alternative dispute resolution in appropriate judicial review cases.**
	In appropriate cases, the Society has no difficulty in supporting this recommendation.

CHAPTER 21 - DEFAMATION (PAGES 281 - 294)

REC NO.	RECOMMENDATION
192	**Reviews (other than the first review and case management hearings), where appropriate, to be conducted by video link or Skype, telephone or email. Court hearings for further reviews should be reserved for exceptional circumstances. Parties, upon agreement and with the approval of the judge, may proceed to pre-trial case management through agreed Order for Directions.**
	The Society has no objection to the various elements making up the entirety of this recommendation.
193	**Consideration to be regularly given to the disposal of generic, straightforward Queen's Bench interlocutory applications through online determination with a right of an oral hearing on request by either party.**
	Where there are generic, straightforward interlocutory applications to be disposed of, the Society has no objection to this recommendation. However we note the views expressed at paragraphs 21.29 - 21.31 and query how frequently such scenarios are likely to arise in defamation proceedings. In relation to the development of any protocol in this area, the Society would welcome an opportunity to contribute to same.
194	**The right to challenge jurors in civil proceedings save for cause to be removed.**
	The Society considers that the position with regard to challenging jurors should be the same for both the criminal and civil jurisdiction.
195	**Jury trials in defamation cases to be retained but the powers of the judge to be expanded to include a discretion to order trial without a jury in matters of complexity.**
	The Society has no objection to this recommendation.
196	**The 2011 Pre-Action Protocol in Defamation to be amended:** **(a) to make clear that cost sanctions may be employed against those who refuse to consider participation in alternative dispute resolution (ADR) without adequate explanation or reason; and**

	(b) to indicate that the Northern Ireland Law Society and the Bar Council have information on the pool of appropriately qualified mediators for defamation cases.
	The Society has no objection in principle to this recommendation but would welcome an opportunity to contribute to any proposed amendment to the existing Pre-Action Protocol in Defamation.
197	**Consideration to be given at the outset of a trial for the jury to determine simple matters which may permit the flow of the trial thereafter to be more focussed, less time consuming and, therefore, cheaper.**
	The Society has no objection in principle to this recommendation. We welcome steps which would permit the flow of the trial to proceed in a more focused less time consuming and more cost effective manner.
198	**A more flexible approach to court rules, perhaps particularly with regard to such formal matters as pleadings, when personal litigants are involved.**
	The Society considers that a greater evidential base is required in relation to defamation proceedings involving PLs before any decision is taken with regard to a more flexible approach in relation to the operation of these cases.

CHAPTER 22 - CLINICAL NEGLIGENCE (PAGES 295 - 303)

REC NO.	RECOMMENDATION
199	**Movement to a paperless Court concept, accompanied by the concept of "paperlight" provision, to be encouraged in clinical negligence cases.**
	The Society is of the view that at this time movement to the concept of a paperless court is still some very considerable time off and that a "paper light" approach is the one to be embraced. In any event, "paper light" will be a necessary staging point on this journey.
200	**Reviews (other than the first review and case management hearings) to be conducted by video, telephone or email, with court oral hearings reserved for exceptional circumstances.**
	The Society has no objection in principle to this recommendation.
201	**Parties to be permitted, with the approval of the court, to agree to dispense with the requirement for an oral hearing and proceed by way of an agreed Order for Directions.**

	This is agreed.
202	**Interlocutory hearings to be conducted by video, telephone or email in straightforward matters. Oral hearings with court attendance to be reserved for those cases where substantial issues arise.**
	This is agreed.
203	**After the exchange of liability reports/financial loss information, parties to be encouraged to engage in settlement discussions at an early stage with emphasis on resolution rather than the form of the resolution.**
	It is the Society's understanding that this recommendation is reflective of current practice.
204	**A period for negotiation/discussion/mediation to be provided, after close of pleadings, exchange of evidence and preparation of expert schedules some six-nine months prior to trial.**
	As at recommendation 203, it is the Society's understanding that this recommendation is reflective of current practice.
205	**A system of accreditation for solicitors and junior counsel who wish to practise in the area of clinical negligence to be introduced.**
	The Society has been willing to consider the benefits of accreditation in circumstances where this may have merit and indeed this was the case prior to the introduction of the Children Order panel of accredited solicitors. Each proposal requires to be considered on its particular merits, against the background of the general professional obligation for solicitors only to take on work which is within their skills and competencies to conduct. This general professional obligation is a cornerstone of the Solicitors' Practice Regulations 1987 and the risks involved in stepping outside these boundaries in terms of client care are evident. Furthermore, the professional training received by solicitors and the requirement to undertake Continuing Professional Development acts as a counterweight towards following a model based on accredited specialisms across all areas of law. The Society would thus caution that moving towards a mandatory arrangement should be weighed against the fact that professional training already requires demonstration of core skills and that the gaining of experience for junior solicitors is critical. Making the system mandatory may impact on the ability of junior solicitors to gain appropriate experience under the supervision of a master due to reducing area of work available.
206	**Consideration of the use of a single joint expert to be encouraged wherever possible.**
	The Society agrees with the position set out at paragraph 22.38. The Court should have the option to request the parties to consider using a single joint expert wherever possible

	but it should not have the power to order same unless agreed by the parties.
207	**Clinical negligence cases usually to be heard in the High Court. Only to be heard in the county court if sufficiently straightforward.**
	The Society is strongly supportive of this recommendation.
208	**Courts to encourage the use of witness statements in appropriate uncontroversial instances and to have the power under the rules to order their use.**
	The Society has no objection to such encouragement being given in appropriate uncontroversial cases. However, the Society has concerns that were the Court to have a formal power to order same, this would lead to increased interlocutory applications and costs in the preparation thereof.

CHAPTER 23 - LICENSING (PAGES 304 - 312)

REC NO.	RECOMMENDATION
209	**In the district judges' courts, the required paperwork to be prepared and communicated electronically for renewals, protection orders and transfers applications.**
	The Society is supportive of this recommendation.
210	**Records (including plans and statutory requirements) to be retained electronically and thus securely without the need for cumbersome paper records being retained at various court offices.**
	The Society sees merit in this recommendation.
211	**A system to be developed (for a suitable administration fee) allowing interested parties to access the materials online.**
	This will be a matter for the NICTS to create secure arrangements which are accessible at a reasonable cost.
212	**Greater encouragement to be given for additional use of the existing statutory regime for many applications to be processed "on paper" by the Clerk of Petty Sessions provided the statutory proofs are in order, particularly renewal applications.**
	Agreed.

213	**Video conferencing to be encouraged where parties or witnesses reside outside the relevant division.**
	The Society has no objection to video-conferencing being used where appropriate.
214	**Experts to be directed to exchange reports and attend a minuted experts meeting pre-trial.**
	Given the "cards on the table" approach to litigation, the Society sees no reason why experts in contested licensing applications should not be directed to exchange reports. We presume it will be the responsibility of the applicant's legal representative to provide the minutes of any expert's pre-hearing meeting.
215	**Licensing days to be more often and spread out over the year.**
	Agreed.
216	**Courts to insist that objections are substantively pleaded and substantiated as soon as possible.**
	The Society considers this essential.

CHAPTER 24 - THE LANDS TRIBUNAL (PAGES 313 - 314)

REC NO.	RECOMMENDATION
217	**Power to be given to refer matters of disputed valuation to the Lands Tribunal, and that the Lands Tribunal be given the necessary jurisdiction to determine such references.**
	In the absence of evidence indicating the extent of any existing problems, the Society queries the need for this power as its use has the potential to add further cost and delay to litigation.
218	**Jurisdiction to be conferred on the Lands Tribunal to determine questions of valuation referred to it by the High Court.**
	See response to recommendation 217.

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CHAPTER 25 - CIVIL JUSTICE COUNCIL (PAGES 315 - 325)

REC NO.	RECOMMENDATION
219	**A Civil Justice Council to be set up as a matter of high priority.**
	The Society is supportive of the creation of a Civil Justice Council and of the proposed remit as set out in paragraph 25.37. Whilst we see some merit in it having a statutory basis, we are persuaded that for the time being it should be established on a non-statutory basis. The advantages of this approach are that it can be done more speedily, that it should prove the worth of the concept and allows for review and refinement before legislation is drafted.

CHAPTER 26 - NON MINISTERIAL DEPARTMENT (NMD) (PAGES 326 - 331)

REC NO.	RECOMMENDATION
220	**The Department of Justice to bring forward legislation to re-constitute the Northern Ireland Courts & Tribunals Service as a non ministerial department (NMD), with a view to having an NMD in place by the end of this Assembly mandate.**
	It is the Society's view that whatever legislative arrangements are put in place, these must ensure the independence of the judiciary. As legislation will be required, the Society will comment further when the primary legislation is published.
221	**In the interim, the judiciary to plan for the creation of an NMD, working closely with officials in the Department of Justice and the Northern Ireland Courts & Tribunals Service.**
	This is noted and agreed.