

## JUSTICE SYSTEM REFORM – PROPOSALS FOR AN ONLINE COURT

### Purpose

1. To invite the Council to consider and approve the ICT Committee's recommendations following its review of online dispute resolution and online courts.

### Background

2. The ICT Committee ("the Committee") submitted the Civil Justice Council's ("CJC") report on online dispute resolution and the online court in England and Wales to the Council on 6 July 2015. The Committee sought approval to consider the CJC's proposals in more detail with a view to making any recommendations to the Council.
3. The CJC report proposed an online court in England and Wales. It proposed that this court should be comprised of three tiers; online evaluation, online facilitation and online judicial determination.
4. The Committee considered the detail of the CJC proposals at meetings on 21 March, 13 June and 10 October 2016. A summary of the CJC recommendations is provided at **Annex A**.
5. These proposals were developed in Lord Justice Briggs' subsequent *Interim Report to the Civil Courts Structure Review* and *Final Report to the Civil Courts Structure Review*. A copy of Lord Justice Briggs' Civil Courts Structure Review: Final Report can be found at <https://www.judiciary.gov.uk/wp-content/uploads/2016/07/civil-courts-structure-review-final-report-jul-16-final-1.pdf>.
6. Lord Justice Briggs joined the Committee meeting on 13 June 2016 by video link to discuss the proposals for an online court. He advised that such a court would be designed throughout to be accessible without a lawyer, using simple rules and with the judge being more inquisitorial than in traditional court proceedings. The grievance would be elicited by questions in an automated system at Stage 1. Settlement would be sought at Stage 2 using Case Officers and, if required, online judicial resolution would be undertaken at Stage 3. Lord Justice Briggs also noted that, in a separate initiative, it is intended that the courts in England and Wales would be effectively online by 2020.

7. The Committee's meeting on 06 February 2017 was not quorate. The Committee formally approved this summary of its recommendations about online dispute resolution and the online court on 20 February 2017, after a note of the discussion on 06 February 2017 was put to members by correspondence.

## **Discussion**

8. **The Committee supports the long term objective of an online court in Scotland and, in particular, supports the development of a three tier online system similar to that put forward by the CJC and developed by Lord Justice Briggs in his interim and final reports.**
9. The Committee noted that the proposals for England and Wales are highly ambitious and that more than £700 million has been committed to the project. The Committee agreed that it did not underestimate the resource implications of such a project and that it did not wish to make any suggestion of where the funds to develop an online court in Scotland would be sourced from.
10. The Committee noted that, taking the geography of Scotland into account, an online court could help court users who may find it difficult getting to and from court. It was agreed that online courts would be beneficial if they avoided the need for court users to travel.
11. The Committee noted that any online court system developed would of course be subject to there being a clear business need and an anticipated sufficiency of business.
12. The Committee agreed that consideration should be given to having case workers to provide advice if an online court was set up in Scotland. This would be similar to Stage 2 of the proposals for England and Wales. It was considered that this had potential to be offered as an option in the sheriff court.

## Existing initiatives

13. The Committee has investigated the extent to which similar initiatives are underway in Scotland and has concluded that both Stage 1 - online evaluation, and Stage 2 - online facilitation, are already in progress. These take the form of the mygov.scot portal project and the Integrated Case Management System project (ICMS).
14. The Committee noted that Mygov.scot is the Scottish Government's national publishing platform, which is currently used to provide information and help to the

public and businesses on a range of justice related matters. The Scottish Government intends to develop mygov.scot further and use it to direct people and businesses to transactional services in the future, for example making payments and booking appointments online and making applications for and receiving legal aid. The Committee noted that the mygov.scot portal project team is currently considering what topic it will be develop within this model and that this is anticipated that an area of family law will be likely. It was also noted that further subject areas, such as debt recovery, could be considered and moved online via the portal project.

15. The Committee noted that the Scottish Government's Justice Digital Strategy (JDS) presented a 'triage' approach similar to the online court proposals. The Justice Digital Strategy, shown at **Paper 6.1A**, sets out how the Scottish Government intends to use digital technology to transform the way in which justice services are delivered in the civil, criminal and administrative justice systems across Scotland.
16. The Committee also noted that simple procedure is currently closely linked with the ongoing ICMS project and development of the Civil Online Portal by the Scottish Courts and Tribunals Service (SCTS). **The Committee agreed that this could be a suitable area of business for online development in the first instance.**
17. It was also agreed by the Committee that any online court project in Scotland should be approached as a development of existing initiatives and not as a standalone project.

#### Next steps

18. Given the existing initiatives being undertaken, the Committee is not recommending any further action at this stage. The Committee is regularly informed of the work being undertaken by SCTS and the Scottish Government through membership of the Committee. The Committee intends to maintain a watching brief as the work progresses in order to support the long term objective of an online court in Scotland.

#### **Recommendations**

19. **The Council is invited to:**
  - a. **formally record its support for a long term objective of an online court in Scotland and, in particular, the development of a three tier online system similar to that put forward by the CJC and developed by Lord Justice Briggs in his interim and final reports; and**

- b. note the Committee's suggestion that the online court should be taken forward in Scotland using simple procedure cases in the first instance.**

**Scottish Civil Justice Council Secretariat**

**March 2017**

## Annex A - Summary of the Civil Justice Council's recommendations

### 2. Recommendations - Summary<sup>1</sup>

- 2.1 Our principal recommendation is that HM Courts & Tribunals Service (HMCTS) should establish a new, Internet-based court service, known as HM Online Court (HMOC). We recommend that HMOC should be a three-tier service.
- 2.2 Tier One of HMOC should provide Online Evaluation. This facility will help users with a grievance to classify and categorize their problem, to be aware of their rights and obligations, and to understand the options and remedies available to them.
- 2.3 Tier Two of HMOC should provide Online Facilitation. To bring a dispute to a speedy, fair conclusion without the involvement of judges, this service will provide online facilitators. Communicating via the Internet, these individuals will review papers and statements and help parties through mediation and negotiation. They will be supported where necessary, by telephone conferencing facilities. Additionally, there will be some automated negotiation, which are systems that help parties resolve their differences without the intervention of human experts.
- 2.4 Tier Three of HMOC should provide Online Judges – full-time and part-time members of the Judiciary who will decide suitable cases or parts of cases on an online basis, largely on the basis of papers submitted to them electronically as part of a structured process of online pleading. This process will again be supported, where necessary, by telephone conferencing facilities.
- 2.5 The establishment of HMOC will require two major innovations in the justice system of England and Wales. The first is that some judges should be trained and authorized to decide some cases (or aspects of some cases) on an online basis. The second innovation is that the state should formally fund and make available some online facilitation and online evaluation services.
- 2.6 To ensure the implementation of our principal recommendation, we propose three supporting recommendations:
  - that HMCTS introduces an ODR stream into its current programme for the reform of civil, family, and tribunal work, and allocates a modest fraction of its £75 million annual reform budget (over five years) for the establishment of HMOC;
  - that all political parties offer in-principle support for HMOC, as a viable way of increasing access to justice and reducing the cost of the resolution of civil disputes; and
  - that the Civil Justice Council invites the ODR Advisory Group to commence a new phase of work, collaborating with HMCTS and the Judiciary in formally piloting ODR, designing HMOC, and raising awareness of this new approach to the handling of civil disputes.

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<sup>1</sup> From the *Report of the Online Dispute Resolution Advisory Group of the Civil Justice Council*, February 2015, pages 6 – 7.

- 2.7 Although our terms of reference are restricted to civil claims under the value of £25,000, we believe that that the jurisdiction of HMOC should also be extended to suitable family disputes and to appropriate cases that come before today's tribunals.