THE ENVIRONMENT AND PLANNING LAW ASSOCIATION OF NORTHERN IRELAND AND NORTHERN IRELAND PLANNING BAR ASSOCIATION

JOINT SEMINAR

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THE NEW PLANNING AND ENVIRONMENTAL LAW REGIME IN NORTHERN IRELAND

The Honourable Mr Justice McCloskey
Court of Judicature of Northern Ireland

Preamble

i. It is my pleasure, indeed privilege, to contribute to the *renaissance* of the Northern Ireland Planning Bar Association, which has been dormant for far too long. In conjunction with its partner organisation, EPLANI, it has much to offer the population of Northern Ireland in a field of legal practice wherein, in my view, there is clear scope for the expansion of high quality legal services. NIPBA was a flourishing organisation some years ago and I am confident it will quickly begin to thrive again provided it receives the necessary support from, above all, members, supplemented by independent actors such as visiting judicial and other speakers. I welcome in particular the joint nature of today's venture. While, in the abstract, a merger of the two organisations might appear preferable, if separate existences are to be maintained obvious benefits will accrue from a close and corroborative bilateral association.

ii. Members of these two organisations should be aware that both are represented in another recently rejuvenated forum, namely the JR Judges and Practitioners Liaison Committee. Please do not hesitate to nag and annoy your representatives so as to ensure that your views are ventilated and debated in this important forum. I would highlight that this is the forum in which an important project involving the review and updating of the Judicial Review Practice Note is being taken forward.

iii. My final introductory comment is that on this auspicious occasion I fulfil a long espoused personal and professional ambition in being considered sufficiently competent to assume the role of support act to William Orbinson QC. I shall treasure this particular privilege for many a day.

[1] On the third anniversary of the major reform of the system of local government in Northern Ireland, some stocktaking is appropriate. A series of judicial review challenges in recent months has provided a useful insight into how the reforms are bedding down in the discrete sphere of planning and environmental law decision making.

[2] Planning and environmental law is a free standing compartment of the new regime introduced by the Local Government Act (NI) 2014 (the "2014 Act"), with effect from 01 April 2015. By this measure, the number of local (or district) Councils was reduced from 24 to 11. The policy imperative driving this reform was the aim to make Councils more efficient, innovative and cost effective, equipped and empowered to discharge a broader range of public functions. These functions included planning decision making, which had previously been the exclusive preserve of central government under the aegis of the Department of the Environment ("DOE"). This was in large part devolved to the 11 reconfigured Councils.

[3] Planning and environmental law had itself undergone a radical reform via the Planning Act (Northern Ireland) 2011 (the "2011 Act"), which was made on 04 May 2011 and, ultimately, came into operation in tandem with the 2014 Act. The nexus between these two heavyweight statutory measures is inextricable.

[4] In passing, the apparently insatiable legislative appetite of the Northern Ireland administration extended to another measure, namely the Planning Bill 2013. The publication of this draft legislation in January 2013 prompted one local commentator to predict "*a gold mine for lawyers, a field day for objectors and a mess for the rest of us*"[1]. The two stand out features of the 2013 Bill were the attempt to legislate for

[1] The indefatigable and indomitable Slugger O'Toole.

economic benefit as a pre - eminent material consideration [my formulation] and the frankly outrageous proposal to restrict the scope of judicial review challenge. This measure eventually ground to a halt following an Assembly debate in October 2013 and, evidently, has not resurfaced.

[5] It is instructive to reflect on the policy drivers underpinning the 2011 Act. In the publicity blaze which accompanied the publication of the consultation paper in July 2009 the Minister of the Environment stated:

> **"*Planning impacts on everyone's life and helps to provide places to live and work, to support regeneration and to protect the best of our natural and historical environment.*"**

The Minister had, in a single and simple sentence, encapsulated what is arguably the central concept in the field of planning and environmental law, namely balance.The need for transparency, speed and democratic accountability was also emphasised. So too was the necessity that the planning system play its role in promoting the key aim of central government, namely expanding the economy. It is, of course, a truism that economic growth requires development, including major infrastructure provision and that development must be sustainable, embracing all material considerations and respecting the wider public interest. Self-evidently social, economic and environmental factors will frequently tug in different directions, with multiple interfaces, requiring a balanced judgment to be made.

[6] It is worth reflecting on the expert advice which was the impetus (though not the only one) for the administration's decision in principle that planning law in Northern Ireland must be reformed. The advice was provided by Professor

Lloyd, an acknowledged expert, to the Minister of the Environment in April 2008. The Professor was alert to the balancing equation in play: to achieve the orderly development of land to meet the needs of the population of the country and to secure the strategic mediation of the different economic, social and environmental values and interests involved in land and property development, while serving as an efficient and effective governance mechanism in the wider public interest. Strikingly, the Professor's evaluation of the extant land use planning system in Northern Ireland was largely positive. He noted that the worst excesses of unregulated land and property development and of unmanaged or uneconomic urban growth had been avoided in NI. The Professor further noted that valuable natural and built environments had been protected and managed in the public interest. Simultaneously he identified a clear need for modernisation to reflect the emergent views and political priorities concerning economic development, the environmental issues associated with climate change and sustainable development, social and community concerns regarding infrastructure provision and the provision of affordable housing. During the previous decade in particular, developments (in the broad sense) in Northern Ireland society had generated complex and multi-layered issues which would have to be balanced and reconciled in planning decision making.

[7] The priorities which Professor Lloyd identified were threefold:

- **First, the need to change and challenge existing practices, assumptions, behaviours and attitudes to the so-called "right" to land and property development in a modern society in which greater emphasis on the public interest is required.**

- **Second, the need to promote a wider appreciation of the public interest in land use planning and to devise effective mechanisms for mediating between competing interests and economic, community and environmental factors in different localities.**

- **Third, linked to each of the foregoing, the need to elevate land use planning in the political agenda via a concerted programme of discussion and debate designed to avoid polarisation and to promote an explicit and engaged recognition of the competing interests and priorities engaged.**

[8] **Significantly, it was at all times envisaged that the reform of local government in Northern Ireland would play an integral role in a rehabilitated, fit for purpose and modernised planning and environmental law regime. It was consistently contemplated that these reforms would have a critical role in promoting the evolving public interest in this jurisdiction. To these policy imperatives I would add the less visible, more subtle role of promoting social cohesion and political stability in the still divided society of NI.**

[9] **The gradual, but inexorable, journey towards the new two-tier planning system which materialised in the guise of the two major new statutes gained momentum upon the publication, in May 2014, of the consultation paper relating to subordinate legislation proposals for planning reform and transfer to local government. The underlying policy goals were clearly framed: a significantly reduced decision-making role for the Department; a radical transfer of decision making functions in the vast majority of cases to councils; the mechanism of local development plans for council districts; and a dichotomy of regional planning policy and local planning policy – which, in the abstract, itself was not novel.**

[10] By this stage the 2011 Act had become law, albeit in largely uncommenced form, awaiting a raft of subordinate legislation. It conferred on the Department an overseeing, strategic role in a context where district councils would become the new decision-making engine room. The Act introduced the mechanisms of local development plans, district council plan strategies and local policies plans. The subjugation of district councils to the Department in these matters is spelled out clearly in sections 10 – 18 of the statute. The Department's new role is also reflected in its obligation to devise, by regulations, a regime of "major developments" and "local developments"[2] and to determine applications for major developments of regional significance.[3] The Department's "big brother" portfolio is further reflected in its power to "call in" planning applications made to a council in specified circumstances[4]. The Department, appropriately, also has the function of decision making in cases where the planning applicant seeking permission to demolish listed buildings or buildings in a conservation area or for hazardous substances consent is a council[5].

[11] Councils, overnight, assumed responsibility for a veritable panoply of planning functions: devising local development plans, formulating statements of "community involvement", devising district plan strategies and local policies plans,[6] entering into statutory planning agreements, taking enforcement action, assuming certain demolition and preservation functions, issuing tree preservation functions, purchase and blight notices, making certificates of alternative development value, policing the control of advertisements and undertaking the determination of hazardous substances consent applications. This veritable

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[2] Per section 25.
[3] Per section 26.
[4] Per section 29.
[5] Per section 105(3) and Regulation 16 of the Planning (Hazardous Substances) (No.2) Regulations (NI) 2015.
[6] Per sections 4, 6, 8 and 9.

tsunami of planning functions and responsibilities descended on councils in Northern Ireland on 01 April 2015. Three years later one may legitimately pose the question: were councils prepared? And, second, how have they fared?

[12] In attempting to reply to this question, one barometer to be applied (with appropriate qualifications) is the number of appeals to the Planning Appeals Commission ("PAC"). Has there been any significant increase? To the best of my knowledge and understanding there has been no significant increase in PAC appeals and no major shift in the content and orientation of appeals. Some further data on this topic would, however, be of interest.

[13] Closer to home (so to speak) there does not appear to have been any significant increase in planning and environmental judicial review cases. Before developing this discrete topic, it is appropriate to highlight some of the welcome features of the new legislative regime.[7] I have selected five in particular:

- **The responsibilities of councils relating to local development plans, district plan strategies, local policies plans and statements of community involvement are clearly formulated and are a reflection of a modern, fit for purpose development control system, articulated in a [largely] intelligible modern statute.**

- **Similarly, the language of the new statutory model is refreshingly unambiguous: councils must discharge their functions with the objective of furthering sustainable development[8] and take into account all policies and guidance issued by OFMDFM and DRD.[9] The legal autonomy of councils is reflected in the statutory <u>obligation</u> to take account of "*any matter***

[7] Viz the 2011 Act.
[8] Per section 5(1).
[9] Per section 5(2).

***which appears ….. to be relevant*".[10] This is reinforced by the statutory <u>obligation</u>, engaged in the determination of every planning application, to "… *have regard to the local development plan, so far as material to the application, and to any other material considerations* …."[11] Provision has also been made for how the council should approach "*subsequent*" planning applications and "*overlapping*" planning applications.[12]**

- **The legislative policy objective of clarity and predictability is reflected in section 50, which provides that a council <u>"*must*"</u> decline to determine a planning application where in its opinion the pre-application community consultation provisions of section 27 have not been observed.**

- **The "*after care*" provisions in section 53 are a reflection of a developing society in which environmental considerations evolve from time to time and, thanks in large measure to the EU regime, have been of ever increasing importance.**

- **Section 59, which makes limited provision for raising new matters in appeals to the PAC, is also to be welcomed.[13]**

[14] Some recent judicial review cases have provided an interesting insight into how councils are going about their business in the brave new world devised by the 2011 and 2014 statutes. From this experience it is possible to identify certain emerging themes.

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[10] Per section 5(2)(b).
[11] Per section 45(1).
[12] See sections 46 and 48.
[13] Considered and construed by the High Court in <u>Belfast City Council v Planning Appeals Commission</u> [2018] NIQB 17 at [83] – [93] ("BCC v PCC").

The Interaction between the Two Statutes

[15] The new Planning Act operates in tandem with the new Local Government Act. The interaction of these measures is unmistakable. Practitioners in the field of planning and environmental law now have the challenge, indeed the responsibility, of being familiar with these two inter-related statutory regimes. The 2014 Act is, in effect, the statutory constitution governing all councils. Practitioners must be alert to in particular Part 7 ("Meetings and Proceedings")[14], particularly the "simple majority" decision making mechanism enshrined in section 39 and the standing orders made pursuant to sections 40 and 41. Familiarity with the provisions governing access to meetings and documents[15] is also essential. The statutory governance of the conduct of councillors is another important discrete topic.[16] This includes the code of conduct for councils promulgated by the Department.[17] The role of the Local Government Commission must also be considered as this embraces the provision of guidance on the conduct of councillors[18] together with provisions relating to investigations and reports.[19] This discrete topic could conceivably arise in the context of an alternative remedies argument in an appropriate case.

Pre-Application Discussions: "PAD"

[16] This was one of the multiple issues which arose in the final incarnation in the "Pandora's box" judicial review served

[14] Sections 36 – 41.
[15] Sections 42 – 52.
[16] Sections 53 – 65.
[17] Under Section 53.
[18] Per Section 54.
[19] Sections 55 – 61.

up to the Court in Belfast City Council v Planning Appeals Commission.[20] I pause briefly to commend the enterprise and skill of all legal representatives involved in this case. From this author's perspective, the need to have recourse to practitioners from other jurisdictions is not altogether apparent. Competition is, of course, to be viewed positively.

[17] In BCC v PAC, the spotlight was focused on the role of planning officers not only during the "PAD" phase (where this is engaged) but also at all stages of the Council's decision-making process. The Court held specifically:[21]

- **There is an important distinction between planning officers and the ultimate decision makers.**
- **Planning officers have considerably greater latitude than decision makers to express provisional views and opinions.**
- **Planning officers, in common with the final decision makers, are legally obliged to maintain an open mind at all stages, acting as the Council's agents.**
- **The duties voluntarily undertaken in PAD guidance instruments must be conscientiously observed.**
- **"PAD" exercises must pay particular attention to the overarching public interest in play, namely the orderly development of land.**
- **One of the aims of every "PAD" exercise must be the avoidance of unnecessary appeals to the PAC and judicial review challenges.**

[20] **BCC v PAC** [2018] NIQB 17, at [45] – [50] especially.
[21] At [46] – [50].

- **Every "PAD" guide is a <u>mere</u> instrument of guidance, subservient to statutory provision, both primary and subordinate.**

<u>Procedural Fairness</u>

[18] It seems to me that the principles of procedural fairness have been somewhat neglected in planning and environmental law jurisprudence. <u>BCC v PAC</u> provided a welcome opportunity to address this lacuna. The Court identified a close association between the "PAD" issues and the legal principles pertaining to a procedurally fair decision-making process. The judgment highlights the following:

- **Every "PAD" guide is subservient to the requirements of common law fairness.**

- **Such guides cannot dilute the duty to take into account all material considerations.**

- **Flexible interpretation and application are essential.**

- **There is a common law duty to give effect to the various procedures and assurances enshrined in every guide.**

[19] It is of particular note that <u>transparency</u> – in common with enhanced expedition and increased predictability – is one of the clearly identifiable legislative objectives. In <u>BCC v PAC</u> the Court, in effect, assigned this self-evidently desirable attribute to its legal homeland, namely common law procedural fairness. Applying this legal prism the Court, on the one hand, applauded the practice of informal communications and discussions between developers and

their agents and planning officials. On the other hand it emphasised the overlay of common law procedural fairness. The judgment states[22]:

> **"*The ingredients of procedural fairness are intrinsically fact specific and context sensitive, varying from one case to another. In the particular context of planning decision making, it seems to me harmonious with well-established principle that the developer should be treated on a 'cards face up' basis throughout the process. This entails, fundamentally, knowing the case which he has to meet. Being taken by surprise in any material respect is antithetical to this principle. This is so not merely because it is procedurally unfair vis-à-vis the developer. It also offends against the overarching requirement of transparency to which all planning decision making has aspired for many years.*"**

The judgment further reasons that no public interest is served by a decision-making process which fails to comply with the requirements of procedural fairness. Such failures are antithetical to the overarching public interest namely the orderly development of land. The Court concluded that the Council's decision was vitiated by the free-standing failure to alert the developer to the planning officers' concerns about the scale and massing of the proposed development[23].

[20] Doctrinally, where a council operates a "PAD" system I consider that this is normally to be accommodated within the legal framework of procedural fairness. In <u>BCC v PAC</u>, the Court placed particular emphasis on the application of the basic principles of procedural fairness to every planning decision making process. The judgment highlights that the

[22] At [32].
[23] At [43].

ingredients of procedural fairness are intrinsically fact specific and context sensitive, varying from one case to another.[24] According to the judgment:

> **"..** ***the developer should be treated on a 'cards face up' basis throughout the process. This entails, fundamentally, knowing the case which he has to meet. Being taken by surprise in any material respect is antithetical to this principle.*****"[25]**

The specific nature of the procedural unfairness perpetrated against the developer was the Council's failure to alert him <u>timeously</u> to the key issue of the scale and massing of the proposed development.[26]

The Court held that the developer and his agents ".. *were unfairly taken by surprise* .. [and] .. *had insufficient time and opportunity to respond and rectify.*"

<u>Council Delegation</u>

[21] The next discrete issue which had to be determined in <u>BCC v PAC</u> was that of internal delegation within the Council of its planning decision making functions. The need for a council scheme of delegation approved by the Department is a statutory requirement.[27] The BCC "Scheme of Delegation" had to be considered and construed in tandem with its Constitution and Standing Orders, wherein one finds both the genesis and the portfolios of its five standing committees, one of which is the Planning Committee ("PC"). Within these assorted provisions there is express delegation to the so-called "Director of Planning and Place" of specified

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[24] At [32].
[25] Ibid.
[26] At [43].
[27] Section 31 of the 2011 Act.

functions, largely of a minor and uncontroversial nature. Yet another instrument, namely the Council's "Operating Protocol" relating to its PC also fell to be considered. The Court ruled that this discrete instrument is to be read and construed with reasonable latitude.[28] The OP also fell to be considered in the context of the assorted other instruments (aforementioned). An elaborate judicial exercise yielded the conclusion that in the performance of all of its functions the Council's PC is the *alter ego* of the Council itself.[29]

[22] One of the important consequences of this analysis is that the corporate Council has no power to amend, vary or revoke the decisions of the PC.[30] In the particular case context, this meant that the corporate Council had no jurisdiction to consider the new amended plans submitted by the developer within days of the pronouncement of the PC's refusal decision at its public proceedings. This analysis took into account section 31(5) of the 2011 Act, which the Court construed as confined to the PC and powers delegated to the Director of Planning and Place.[31] This, in turn, must be related to the role – and limitations – of the PAP process in this discrete sphere of judicial review litigation.

The Legal Effective Date of Planning Decisions

[23] It came as a surprise to the Court that the elaborate new statutory framework contains no clear provision for ascertaining the legally effective date of council planning decisions. A lengthy, and far from scenic, tour of both statute and common law ensued, the *terminus* being the Court's conclusion that the legally effective date is the date of notification to the developer. This conclusion was underpinned by, *inter alia*, a principle of constitutional

[28] At [68].
[29] At [71].
[30] At [72].
[31] At [73].

stature, namely the right of every person to know of a decision as a pre-condition of any adverse impact upon their rights and interests.[32] The Court reserved for a suitable future case the interesting question of whether a council's planning committee may be entitled – or, indeed, bound – to revisit and reopen one of its planning decisions.[33] I observe, arguendo, that the Council's internal constitutional arrangements may not necessarily be determinative of this interesting issue.

Construing Section 59

[24] **The next of the myriad issues confronting the Court in BCC v PAC was the correct construction of section 59 of the 2011 Act. Section 59 has no statutory antecedents in this jurisdiction nor any analogue in the England and Wales legislation. The Court identified the underlying legislative policy as that of maximising expedition, in tandem with reducing formality.[34] It rejected the argument that the statutory phrase "*could not have been raised*" denotes 'was not capable of being raised'. This was rejected *inter alia* on the grounds that it would yield an austere outcome, tangibly unfair to the developer and would also effectively nullify the Court's analysis and conclusions regarding procedural fairness in the particular case context.[35] Rather, section 59 is to be construed taking into account considerations of fairness and reasonableness.[36] The Court further held that the language of the statute clearly places an onus on the party seeking to avail of this dispensation. Further, what is required of the PAC is the formation of an evaluative judgment which will be open to review on orthodox public law grounds.[37] The Court also drew attention to the broad**

[32] At [79] – [80].
[33] At [82].
[34] At [85].
[35] At [87].
[36] At [88].
[37] At [89].

framework of public law material considerations (on the one hand) and the narrower framework of land use considerations in the world of planning decision making (on the other).[38]

PAC Informal Appeal Hearings

[25] The Court then turned its attention to the discrete topic of PAC informal appeal hearings, noting that the Department has not exercised its rule making power under section 204(5) of the statute. It considered the effect of this to be that the PAC has considerable latitude in matters of procedure – but subject to the overarching requirement of abiding by the principles of procedural fairness.[39] The Court found little to criticise in the PAC's "Appeal Procedures" publication, approving the open-textured terms in which it is framed and its evident adaptability to individual appeal contexts.[40] It both adopted and augmented the guidance contained in Re Stewart's Application.[41]

[26] Finally (on this issue) the Court rejected the Council's suggestion that the PAC hearing, which was of the informal species, at which the Council had been represented by a planning officer and the developer by Senior Counsel and Solicitor, had been procedurally unfair.[42] The judgment recommended that the PAC consider some slight modification to its extant practices and procedures with a view to ensuring that all parties are alerted to the fact of legal representation in advance.

General Reflections

[38] At [92].
[39] At [99] – [100].
[40] At [104].
[41] [2003] NICA 4.
[42] At [108] – [109].

[27] Via a succession of recent judicial reviews informed insight into how Northern Ireland Councils are setting about their planning decision making responsibilities has become possible. In broad terms:

- **The key document is the planning case officer's report to the PC.**

- **The proceedings of the PC are normally conducted in public.**

- **The mechanisms of legal advice, other advice and a site visit are available to the PC.**

- **Presentations to the PC, in accordance with the Council's SOs, are possible.**

- **And decisions – accountably, democratically and transparently – are also taken in public, via the visible physical manifestation of a show of hands.**

[28] Given that the formal notification to the developer and interested parties of the Council's planning decision is effected via a relatively formulaic and uninformative letter, all of the foregoing elements assume obvious importance from the perspective of evaluating a council's common law duty to provide adequate and intelligible reasons for its decisions.[43] Furthermore, the Court has held that one of the main functions of each council's Operating Protocol is to secure that planning decisions accord with legal requirements of this kind.[44]

[43] South Bucks DC v Porter No 2 [2004] UKHL 33. And see BCC v PAC at [53] – [54].
[44] BCC v PAC at [55].

[29] The Court has also highlighted that the new planning decision making system in Northern Ireland is still in its infancy, with the result that decision-making Councillors are not to be presumed expert or especially well informed.[45] Thus a generous degree of latitude and deference to decision making councillors is not appropriate.

The Judicial Review Court

[30] I draw attention to some of the key features of the processing of planning/environmental cases in the Judicial Review Court:

- **Every new JR leave application is referred to and considered by the Judge normally within 7 days and sometimes sooner, particularly where expedition is clearly requested.**

- **A case management directions order issues within 7 days of lodgement of leave papers in the vast majority of cases. This is usually the key order in every case.**

- **Leave to apply for judicial review is more likely to be granted on the papers than previously.**

- **Every initial CMD Order will (inexhaustively) reflect, *inter alia*, the issues of standing and delay (where these arise), compliance with the PAP and JR Practice Note and the formulation of the grounds of challenge. All of this brings about focus, refinement and clarity, thereby enhancing expedition and finality and promoting the overriding objective.**

[45] Ibid at [57] – [58].

- **Time and space limits will normally be applied to oral and written argument.**

- **The judgment of the Court is normally available within 2 weeks of the hearing completing.**

- **The judgment is likely to be circulated in draft to the parties' respective Counsel, in advance of formal promulgation.**

- **There is a strong emphasis on the compilation of refined and focused hearing bundles and, where appropriate, a core bundle. The assembling of planning policy documents in a discrete bundle will normally be appropriate.**

- **Interested third parties (usually developers) will normally be granted rights of participation and the mode of participation will be contextually sensitive.[46] Alertness to the overriding objective and, more specifically, active participation among all parties will invariably be expected by the Court.**

[30] I would further highlight one discrete procedural issue. The PAP provisions of the JR Practice Note (Appendix 1) contain, at [4], the following statement:

> **"*This protocol <u>will not be appropriate</u> where the proposed Respondent does not have the legal power to change the decision being challenged, for example decisions issued by tribunals such as the Asylum and Immigration Tribunal.*"**

[46] <u>BCC v PAC</u>, [2] – [7] and O. 53, Rule 5 (3).

Having regard to certain surrounding provisions there may be scope for the view that this statement should not be construed so as to exclude planning decisions from the PAP requirements. However, given that this issue has arisen in certain cases of recent vintage, particularly those involving unrepresented litigants, this will be one of the issues considered in the review of the Practice Note which is currently underway. Representatives of EPLANI and PBA are formally invited to submit their views and representations in writing on any aspect of the JR Practice Note and to do so by 01 May 2018. This invitation is also being extended to all members of the JR practitioners/judges liaison committee. One of the innovations which may emerge from this exercise will be the introduction of a model Order 53 pleading to be employed in all cases, as an appendix to the Practice Note. Mechanisms of this kind will be designed to promote the overriding objective and, more specifically, to enhance the self-evidently important values of clarity, coherence and expedition.

[32] One final, less than euphoric, reflection. Regrettably, but incontrovertibly, in the year 2018 the so-called "Unholy Trinity" – the constituent elements whereof are avoidable delay, excessive cost and avoidable complexity - continues to patrol our Courts with some vigour. The JR Court is actively involved in a daily crusade to counter its malign influences. It may be said that, in truth, nothing has changed all that much since the First Common Law Commission reported in its first report, published in 1828, that the organisation's aim was to –

> **"***.. render proceedings shorter, cheaper and more certain .. to point out the shortest and least expensive course, consistent with the safe administration of justice to both the litigant parties.***"**

While I quickly say amen to that, the echoes of Charles Dickens' Bleak House continue to resonate in our Court system, to the embarrassment (and shame?) of some.

[33] To EPLANI and YBA I say 'onwards and upwards'!