

**MEETING OF THE SCOTTISH CIVIL JUSTICE COUNCIL
WORKING GROUP**

MONDAY 14 SEPTEMBER 2016 AT 12 NOON

JURY ROOM 9, PARLIAMENT HOUSE, EDINBURGH

MINUTES

Members Present: Sheriff Principal Abercrombie (SCJC member, Chair)
Sheriff Hughes (SCJC member)
Nicola Anderson (SCTS, Legislation Implementation Team)
Marie-Louise Fox (SLAB representative)
Hamish Goodall (Scottish Government representative)
Sheriff Liddle
Jillian Martin-Brown (Advocate)
Rona Jamieson (Solicitor)
Elizabeth Ross, (COPFS)
Alex McCloskey (Consumer representative)

Support: Caroline Mair (Deputy Legal Secretary, Rules Rewrite Drafting Team)
Karen Stewart (Business and Policy Manager, Scottish Civil Justice Council)

Apologies: Jane MacDonald, Jackie Powell

Item 1: Welcome, apologies and agreement of private papers

1. The Chairman welcomed those present and noted apologies from Jane MacDonald, Jackie Powell.
2. The working group agreed not to publish the following papers: 2.2, 3.1, 3.2, 3.3 and 3.4.

Item 2: Previous meeting

Item 2.1 – Minutes of previous meeting (Paper 2.1)

3. **Members agreed the minutes from the previous meeting subject to an amendment in paragraph 11.**

Item 2.2 – Progress of actions from previous meetings (Paper 2.2)

4. Karen Stewart provided an update on a forthcoming seminar on concurrent expert evidence being run by the Judicial Office in England & Wales in December. Sheriffs Liddle and Hughes noted an interest and Miss Stewart undertook to obtain further information.
5. Elizabeth Ross provided information about Crown Office policy regarding the disclosure of witness statements and confirmed that that precognitions are not disclosed as, other than precognitions on oath, they are not admissible in evidence. The Crown position is that they do not endorse the working group proposal in respect of a preference for written evidence and indicated that the Lord Advocate will be consulted. The Crown will also require to consider resource implications of the proposed working group policy.
6. The working group discussed the issues arising and noted the Crown's position. Sheriff Liddle noted that Crown Office policy appears to make no differentiation between the criminal process and the investigatory nature of a fatal accident inquiry. The working group noted the Crown's position and re-iterated the purpose of the inquiry proceedings and the rationale for the current proposals regarding written evidence. It was noted that overall costings to the justice system were unlikely to increase but that loadings across the system may change as a result of the proposals.
7. **The working group's policy position regarding written was endorsed by all parties present.**
8. **Members noted the progress that had been made on actions since the last meeting.**

Item 3: Proposals for rules

Item 3.1 Inquiry procedure Rules - Draft Statement of Principle (Paper 3.1)

9. Members considered Paper 3.1 and the terms of the draft statement of principle. There was detailed discussion on the content of the statement and a number of suggested revisions were provided to the drafter, Caroline Mair. The Chair thanked Miss Mair for her work in preparing the draft statement. **The working group instructed a revised draft to be prepared for the next meeting.**

Item 3.2 SCJC Working Group - Policy Development for Rules of Court (Paper 3.2)

10. Members considered Paper 3.2 which set out a summary of the policy conclusions and recommendations to date. Members made a revision to clarify the agreed position regarding written evidence. **Members then agreed that the summary was an accurate record of the agreed policy and that it could be incorporated into the working group report being drafted by the secretariat.**

Item 3.3 Inquiry procedure Rules – Consultation Proposals (Paper 3.3)

11. The working group considered Paper 3.3 which set out proposals for consultation on the draft rules in due course. **Members agreed that a targeted consultation is appropriate and that the proposals should be submitted to Council for approval by way of correspondence.**

Item 3.4 Draft Inquiry Procedure Rules (Paper 3.4)

12. Members considered the draft rules provided in Paper 3.4. It was noted that these were a first draft and are provided as a basis for further discussion.

13. **There was detailed discussion on both content and drafting and the following matters were agreed:**

- **standard rules should apply unless the sheriff directs otherwise**
- **the rules should be ‘future-proofed’ in order to permit developments in court technology**
- **the rules should be permissible for party litigants**

Item 4: AOCB

14. Hamish Goodall sought the working group’s view on 1 May 2017 as the indicative date for commencement of the Act. Members discussed the proposed date. Nicola Anderson advised that the Scottish Courts and Tribunals Service would have no difficulty with the proposed implementation date. It was noted by the working group that this date appeared achievable on the basis that the implementation timetable provides for the draft rules to be placed before the Scottish Civil Justice Council for approval in March 2017.

Item 5: Dates of future meetings

15. Members noted the dates of future meetings:

- 8 November 2016, time and venue to be confirmed
- 15 December 2016 at 12 noon, Judges conference room, Parliament House, Edinburgh
- 26 January 2017 at 2pm, Judges conference room, Parliament House, Edinburgh
- 28 February 2017 at 11am, Judges conference room, Parliament House, Edinburgh

Scottish Civil Justice Council Secretariat

September 2016