

## The Scottish Civil Justice Council

### Background

1. The Scottish Civil Justice Council (the Council) was established on 28 May 2013 under the [Scottish Civil Justice Council and Criminal Legal Assistance Act 2013](#). It replaced the Court of Session and Sheriff Court Rules Councils, taking over the rule drafting functions. The Council has a wider role to keep the civil justice system under constant review and to advise the Lord President on the civil justice system in Scotland and to make recommendations for reform.

2. With its oversight of the entire civil justice system, the Council is a key delivery body for civil courts reform and plays a critical role in implementation of the Courts Reform (Scotland) Act 2014. The Council is directly involved in consideration and implementation of Sheriff Principal Taylor's Review of Expenses and Funding of Civil Litigation in Scotland. The Council will now oversee the implementation of the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016 (the 2016 Act) and will hold a care and maintenance function (under the 2013 Act) for any inquiry procedure rules which are in due course enacted.

3. The Council is required to publish an annual programme and report, which must be laid before the Scottish Parliament each year. It is anticipated that the work to implement the 2016 will feature as a drafting priority in the new annual programme.

### Functions and Powers

4. The Council's functions include:

- keeping the civil justice system under review;
- reviewing the practice and procedure followed in the Court of Session and in civil cases in the sheriff court;
- preparing draft rules of procedure for the civil courts;
- advising and making recommendations on the development of and changes to the civil justice system in Scotland.
- to review the practice and procedure followed in inquiry proceedings under the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016

5. The Council has broad powers to help it carry out its functions, including the ability to make recommendations to the Scottish Ministers, conduct consultations and commission research. It is also able to take into account proposals for reform when preparing draft rules.

### **Governance**

6. The Scottish Civil Justice Council and Criminal Legal Assistance Act 2013 (“the 2013 Act”) sets out the statutory framework for the SCJC. Key points worth highlighting are:

- Direction and oversight of the Council rests with the Lord President.
- Within the framework of the 2013 Act, the Council has broad powers to regulate its own proceedings and those of its committees.
- The Council has adopted Standing Orders and a Code of Conduct for Council and Committee members. A copy is attached (**Appendix 1**)
- The membership of SCJC committees is set by the SCJC.

### **Guiding Principles**

7. In carrying out its functions, the Council must have regard to the following principles:

- the civil justice system should be fair, accessible and efficient;
- rules relating to practice and procedure should be as clear and easy to understand as possible;
- practice and procedure in the civil courts should be as similar as possible, where appropriate; and
- alternative methods of dispute resolution should be promoted, where appropriate.

8. The Council will systematically review new sets of rules 18-24 months after their entry into force. The starting point for any review will be the SCJC’s guiding principles.

### **Committees and Working Groups**

9. The Council has established a number of committees with a view to their making recommendations on matters of policy and where appropriate, to submit draft rules for the Council to consider. The following committees and groups have been established:

- Family Law Committee (Chair: Lord Brailsford)

- Personal Injury Committee (Chair: Lord Armstrong)
- Rules Rewrite Committee (Chair: Lord President)
- Access to Justice Committee (Chair: Lady Wise)
- Information and Communications Technology Committee (Chair: Lord Tyre)
- Costs and Funding Committee (Chair: Lord Burns)
- SCJC Working Group (Chair: Sheriff Principal Abercrombie)

### **Consultation and Transparency**

10. The Council is committed to working with interested parties through:

- committees and working groups
- formal or informal consultation
- commissioning research

11. The Council seeks to engage with these groups and individuals and to draw from their experience. In light of the consultative nature of the Council itself, consideration to the question of consulting on individual suites of rules is undertaken on a case by case basis.

12. Where possible, draft rules are made available in advance and it is recommended that there should be at least a 3 month laying period for new rules. The Council builds in the review of new suites of rules into its annual programme. This could also involve varying degrees of consultation.

13. The Council is subject to the Freedom of Information (S) Act 2002 and proactively publishes its information, including meeting papers.

### **Recommendation**

**14. Members are asked to note this paper and to familiarise themselves with the Standing Orders and Code of Conduct.**

**Scottish Civil Justice Council Secretariat  
April 2016**

**Appendix 1**

**SCOTTISH CIVIL JUSTICE COUNCIL  
STANDING ORDERS  
(LAST UPDATED 28 September 2015)**

**1 General**

- 1.1 The Scottish Civil Justice Council (“SCJC”) is established under Part 1 of the Scottish Civil Justice Council and Criminal Legal Assistance Act 2013 (“the 2013 Act”).
- 1.2 These standing orders, for regulation of the conduct and procee SCJC are made under section 12 of the 2013 Act.
- 1.3 No standing order is to be made, read, applied or suspended in such a manner that contravenes any rule of law or legislative provision.
- 1.4 These standing orders are made by and can be altered or suspended, in whole or in part, by a majority of the members of the SCJC.
- 1.5 Where these standing orders do not make specific provision, the Chair of the SCJC, in consultation with the deputy to the Chair, will have discretion to determine all questions of procedure for the conduct and proceedings of the SCJC.
- 1.6 The following standing orders, in particular, shall apply to proceedings of any committees established by the SCJC as they apply to the SCJC, with any such modifications as are necessary :
  - General: 1.1- 1.3, and 1.7
  - Membership: 2.3 (a)-(d), 2.4-2.8
  - Ordinary Meetings: 4.2, 4.4-4.8, 4.10 – 4.15
  - Agenda: 5.1-5.3
  - Minutes and Publication of Papers: 8.1-8.7
  - Committees: 9.4-9.8
  - Communications: 11.1-11.7
  - Freedom of Information (Scotland) Act: 12.1-12.3
  - Confidentiality: 13.1-13.4
  - Members’ expenses: 14.1
- 1.7 With the exception of Section 4: Registration of Interests the Members’ Code of Conduct at Annex A shall apply to members of any committee established by the SCJC, as they apply to members of the SCJC with any necessary modifications. Notwithstanding the fact that committee members are not required to register the interests listed at Section 4 of the Code of Conduct, those interests listed therein remain declarable under Section 5.

## **2 Membership**

- 2.1 Members are appointed to and hold office in the SCJC in accordance with the provisions of section 6 of the 2013 Act and the Lord President's Statement of Appointment Practice (made under section 7 of the 2013 of the 2013 Act).
- 2.2 Members are expected to subscribe to and comply with the code of conduct set out at Annex A.
- 2.3 Where a dispute arises as to whether a conflict of interest exists in respect of any member, the following procedure will apply:
  - (a) in the event of the potential conflict arising during the course of a meeting the Chair will have the power to rule as to whether such a conflict exists. In the event of a positive ruling, the member concerned will not be permitted to be further involved in that part of the meeting affected by the conflict;
  - (b) in the event that the potential conflict arises outwith a meeting then the Chair will have power to rule as to whether such a conflict exists. In the event of a positive ruling, the member concerned will not be permitted to be further involved in the business affected by the conflict;
  - (c) before ruling in either of the circumstances set out in (a) or (b) above, the Chair may take views of other members of the SCJC as he or she deems necessary;
  - (d) a record of the area of potential conflict, the ruling reached and by whom will be retained.

### *Committees*

- 2.4 Each committee must have at least one SCJC member appointed to it.
- 2.5 A SCJC member's period of appointment to a committee will run concurrently with their appointment to the SCJC. Subject to standing orders 2.8 and 9.3, committee members will be appointed for a period of three years, beginning from the date upon which the SCJC approved the appointment. On the expiry of a period of appointment, the SCJC may agree to appoint a member for a further period of up to three years.
- 2.6 Representatives of the Scottish Courts and Tribunals Service, the Scottish Legal Aid Board and the Scottish Government have standing appointments to committees.
- 2.7 The Scottish Courts and Tribunals Service, the Scottish Legal Aid Board and the Scottish Government may nominate one alternative representative to attend on behalf of a standing appointee to a committee.
- 2.8 A committee member may, by giving notice in writing to the Chair of the committee, resign as a member of a committee. A SCJC member may, by

giving notice in writing to the Chair of the SCJC, resign as a member of a committee.

- 2.9 If the Chair of the committee and the Chair of the SCJC are satisfied that a member's attendance at meetings has been unsatisfactory or that the member is otherwise unable or unfit to discharge the functions of a member, they may, by giving notice in writing to the member, remove that person from the committee.
- 2.10 Where appropriate, periods of reappointment will be staggered to ensure some continuity of membership.

### **3 Chair of the SCJC**

- 3.1 Meetings will be chaired in accordance with section 11 of the 2013 Act. The Lord President is Chair.
- 3.2 Members must elect a member to act as deputy to the Chair.

### **4 Ordinary Meetings**

- 4.1 The SCJC will meet six times in each financial year on dates and at times and places determined by the SCJC and specified in the notice calling the meeting.
- 4.2 Notice of meetings, with an agenda detailing the business to be transacted, will be issued electronically to each member not less than seven days prior to the date of the meeting, together with copies of all relevant papers. Late papers will be issued or tabled only in exceptional circumstances.
- 4.3 All decisions must be made by the members of the SCJC unless an individual or committee has been delegated to deal with a specific issue.
- 4.4 Decisions of the SCJC will generally be by consensus of those attending meetings.
- 4.5 Any matter put to the vote is decided by a simple majority. In the event of a tie, the Chair has a second vote. Only members present at a meeting may vote. Proxy voting is not allowed. Members departing early will be treated as non-attending for the purpose of any decision taken after the time of departure.
- 4.6 Decisions of the SCJC are binding on members.
- 4.7 Members have a duty not to comment on any matter in any way that undermines the principle of collective responsibility for decisions of the SCJC.

- 4.8 Notwithstanding standing order 4.7, a member may have his/her dissent to a decision of the SCJC recorded provided he/she has attended for the whole of the discussion and decision, and asks to record his/her dissent immediately after the decision is concluded. The recording of any such dissent shall not, however, affect standing order 4.6.
- 4.9 No business shall be transacted at a meeting unless there are present at least seven members, of whom at least three are non-judicial members.
- 4.10 The Chair will regulate discussion and debate and will ensure that all present enjoy equality of opportunity to express their views.

#### *Committee Meetings*

- 4.11 Where the Chair is unable to attend a committee meeting and with the approval of the Chair of the SCJC, he or she shall in advance of that meeting, nominate a member to act as Chair for the purposes of that meeting.
- 4.12 The quorum of a committee meeting is one in excess of half the membership, and this must include, subject to rule 4.11, the Chair. However, when not quorate the members present may decide to proceed with a meeting at which items on the agenda are considered and any recommendations reached are put to the next committee meeting for decision if time allows or otherwise are put to the SCJC for decision, with a clear statement that the meeting had not been quorate.

#### *Items by correspondence*

- 4.13 Between meetings the SCJC or its committees may consider matters by correspondence.
- 4.14 Notwithstanding rule 4.13, any such matter subject to consideration by correspondence will be tabled for discussion at the next SCJC or committee meeting (as the case may be) at the request of any member, where time allows it.
- 4.15 The outcome of consideration by correspondence will be recorded in the minutes of the next relevant SCJC or committee meeting.

## **5 Agenda**

- 5.1 Any member may propose an item for the Agenda of an Ordinary meeting by contacting the Secretariat not less than 15 working days before the date of the meeting.
- 5.2 Any member wishing to raise an urgent item at the meeting must give notice at the start of the meeting. The members present will decide whether any such item will be discussed or dealt with at a subsequent meeting.

## **6 Extraordinary Meetings**

- 6.1 The Chair may call a meeting of the SCJC at any time and shall do so on receipt of a formal request which specifies the business to be transacted at the meeting and which has the support of one third of the whole number of members of the SCJC. A formal request under this standing order shall be sent to the Secretariat.

## **7 Emergency rules**

- 7.1 In the event that the Court of Session proposes to make rules in respect of sheriff court proceedings as a matter of emergency and where time does not permit the convening of an extraordinary meeting (for instance where a delay in making rules is likely to be seriously detrimental to the interests of justice or to be contrary to legislation), it must at a minimum, consult the Sheriff Principal and sheriff member of the SCJC before doing so.<sup>1</sup>
- 7.2 On every occasion standing order 7.1 is invoked, the circumstances will be reported to all members and to the Secretariat at the earliest opportunity. All such actions will be reported to the next meeting of the SCJC.

## **8 Minutes and publication of papers**

- 8.1 Minutes will be kept of each meeting of the SCJC recording the members present, apologies tendered and accepted for non attendance, issues considered, decisions reached and resolutions passed.
- 8.2 Within fifteen working days of a meeting, draft minutes (as revised or approved by the Chair) will be circulated to all members and will be published on the SCJC website in draft form. The draft minutes will be tabled at the next meeting for approval. Once approved, minutes will be published on the SCJC website in final form and the draft minutes removed.
- 8.3 Where those present at a meeting of the SCJC or any of its committees determine that any part of the business conducted is confidential, that part of the proceedings will be minuted separately and will not be published under standing order 8.2.

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<sup>1</sup> Subsection 32(3) of the [Sheriff Courts \(Scotland\) Act 1971 \(c. 58\)](#) provides that the Court of Session, when making rules for the sheriff court of its own accord, must consult the SCJC and take into consideration any views expressed by it, before making those rules.

- 8.4 All or part of a SCJC or committee meeting may be held in the absence of non-members where those present determine that their presence may hinder free and open discussion of an item of business.
- 8.5 Agendas and papers for meetings will be published online alongside draft minutes within fifteen working days of a meeting, excluding: draft rules, private papers and any papers or part thereof relating to an item determined to be confidential under standing order 8.3.

*Private Papers*

- 8.6 At the commencement of each meeting the SCJC or relevant committee shall determine which papers are to be considered private in terms of standing order 8.4. Private papers include, but are not restricted to, advice (including legal advice), documents in draft (including draft rules, papers for publication and responses to consultations) and papers which have been submitted to the SCJC in confidence.

## **9 Committees**

- 9.1 Committees established under section 13 of the 2013 Act will operate strictly in accordance with the terms of their remit.
- 9.2 When establishing committees, the SCJC will:
- (a) determine the membership;
  - (b) select or confirm the arrangements for chairing of the committee meetings;
  - (c) establish the terms of reference (in consultation with the Chair of the committee);
  - (d) unless determined otherwise during the establishment of a committee the standing orders noted in paragraphs 1.6 and 1.7 of these standing orders shall apply to all committees.
- 9.3 The SCJC will review its committee structure at least annually.

*SCJC's delegated authority to its committees*

- 9.4 Delegated authority for each committee is contained in the remit for each committee as agreed by the SCJC. This includes consideration at first instance of correspondence, policy proposals or requests for rules which fall within the committee's remit. The SCJC may delegate specific matters to committees through its annual business programme or on an ad hoc basis.
- 9.5 Generally, committees are expected to take matters as far as appropriate before making recommendations to the SCJC. Where items are routine they will stay with the committee until the final stage of decision-making.

- 9.6 Nothing in these standing orders or the remit of any committee affects the ability of the SCJC to deal with any matters at first instance that might otherwise fall to a committee.

*Reporting of committees*

- 9.7 The Secretariat will provide a report on the activity of the Council and its committees at each SCJC meeting.
- 9.8 Each year, committees will prepare and submit to the SCJC a report on their activity for that year (beginning 1 April) for the purposes of the preparation of the SCJC annual report.

*SCJC's delegated authority to its Secretariat*

- 9.9 The Secretariat to the SCJC has authority to:
- (a) respond to consultations on behalf of the SCJC where:
    - (i) it appears to the Secretariat that nothing in the consultation engages the SCJC's interests; and
    - (ii) a formal response only is required;
  - (b) deal with any correspondence relating to a matter outwith the remit of the SCJC, to include forwarding that correspondence to any other public authority which the Secretariat considers to be better placed to deal with the matter.
- 9.10 The Secretariat may at any time consult the Chair of the SCJC (or in his absence the Deputy Chair) as to the proposed exercise of the delegated, functions, and must do so if the Secretariat considers that the matter in question may be controversial.

## 10 **Decisions Reserved for the SCJC**

- 10.1 The following decisions are reserved for the SCJC:
- (a) annual programme and annual report;
  - (b) standing orders;
  - (c) the establishment of terms of remit and reporting arrangements for all committees acting on behalf of the SCJC;
  - (d) membership of committees.

## 11 **Communications**

*Communications with the public*

- 11.1 The SCJC website will be the primary means for communicating the activities of the SCJC and committees to the public. The Secretariat will maintain the website and publish information held by the SCJC to it in accordance with the SCJC's [publication scheme](#).

11.2 The Secretariat will receive and log all correspondence to and from the SCJC. Any such correspondence received or sent by an individual member in relation to the SCJC will be copied to the Secretariat for this purpose.

11.3 The Secretariat will present significant items of correspondence to the SCJC or *relevant committee*, with the *relevant* Chair's approval.

*Communications with members*

11.4 Correspondence with Council and committee members will primarily be via email. This includes issuing of papers for meetings. The Secretariat will make adjustments or provide documents in alternative formats where these are required by persons with additional needs.

*Communications with the press*

11.5 The Secretariat will liaise with the press as required on behalf of the SCJC, including as to the following:

- (a) promoting the work of the SCJC in accordance with an agreed communication strategy;
- (b) issuing press releases on Council activities and on developments relating to the SCJC's work;
- (c) responding to press queries.
- (d) the Secretariat will present any significant items to the Chair, or *relevant committee Chair*, for approval.

11.6 Members who receive enquiries from the press should pass these to the Secretariat. Where a member wishes to undertake promotional activity in their official capacity without the SCJC's prior agreement (or if delegated to a committee, without the committee's prior agreement), they will seek the Chair's approval through the Secretariat.

*Public statements*

11.7 Public statements concerning the SCJC will normally be made by the Chair, or by the Secretariat acting on behalf of the Chair.

11.8 Public statements concerning the work of a committee may be made by the Chair of that committee, or by the Secretariat acting on behalf of the committee Chair.

## **12 Freedom of Information (Scotland) Act 2002**

12.1 The Secretariat will log and maintain all significant and relevant documents and information pertaining to the SCJC in accordance with the requirements of the Freedom of Information (Scotland) Act 2002 (FOISA) and the Data Protection Act 1998.

- 12.2 The Secretariat will respond to requests made under FOISA on behalf of the SCJC. The Secretariat will seek the approval of the Chair, or relevant committee Chair, in respect of all non-routine requests as to any response.
- 12.3 Where information is requested which contains individual SCJC or committee members' opinions, or which relates to a SCJC or committee member in particular, the Secretariat will notify the member(s) in question of the request and consult them before releasing any such information (where that is in contemplation). Such notification and consultation will be subject to members' availability and the applicable time limits under FOISA.

### **13 Confidentiality**

- 13.1 All members, the Secretariat and any other person present at Council and committee meetings, have a duty:
- (a) not to discuss items of business agreed under standing order 8.3 to be confidential with any person who was not present at that meeting unless authorised to do so by the Chair;
  - (b) not to disseminate correspondence not otherwise publicly available (including agendas, papers, draft rules and minutes of meetings, or parts thereof) beyond the membership or the Secretariat, except with the approval of the Chair.
- 13.2 The Secretariat will ensure that members' attention is drawn to any confidential items.
- 13.3 Decisions as to whether an item is confidential will be made by the Secretariat with regard to statutory obligations and in accordance with the [publication scheme](#). Where there is any doubt as to whether an item should be treated as confidential, the Chair will determine the matter.
- 13.4 This standing order is without prejudice to the terms of the Public Interest Disclosure Act 1998.

### **14 Members' expenses**

- 14.1 Members and committee members will be entitled to claim for costs associated with Council business in accordance with the [Expenses Scheme](#) set by the Scottish Courts and Tribunals Service (SCTS).

**MEMBERS' CODE OF CONDUCT  
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## **SECTION 1: INTRODUCTION TO THE CODE OF CONDUCT**

- 1.1 This code of conduct is derived from the recommendations of the Committee on Standards in Public Life and is similar to the codes of conduct engaged for other public bodies.
- 1.2 The Scottish public has a high expectation of those who serve on the boards of public bodies and the way in which they should conduct themselves in undertaking their duties for the public body. As a member of the Scottish Civil Justice Council (“the SCJC”) you must meet those expectations by ensuring that your conduct is above reproach. Although the code relates to your behaviour as a member of the SCJC, as a consequence of your membership of the SCJC, this code may equally apply to you in your private life.
- 1.3 It is your responsibility to make sure that you are familiar with, and that your actions comply with, the provisions of this Code of Conduct.

### **Guidance on the Code of Conduct**

- 1.4 You must observe the rules of conduct contained in this Code. It is your personal responsibility to comply with these and review regularly, and at least annually, your personal circumstances with this in mind, particularly when your circumstances change. You must not at any time advocate or encourage any action contrary to the Code of Conduct.
- 1.5 The Code has been developed in line with the key principles listed in Section 2 of the Ethical Standards in Public Life Act 2000 and provides additional information on how the principles should be interpreted and applied in practice. No Code can provide for all circumstances and if you are uncertain about how the rules apply, you should seek advice initially from the Secretariat. The Secretariat may refer the matter to the Chair. You may also choose to consult your own legal advisers and, on detailed financial and commercial matters, seek advice from other relevant professionals.

### **Enforcement**

- 1.6 Failure to adhere to this code may give rise to grounds for your removal as a member of the SCJC under the provisions of subsection 9(2) of the 2013 Act. Before invoking that process, the Lord President may choose to offer guidance or a warning or both or to invoke any of the sanctions outlined in paragraph 7.1 of this Code.

## **SECTION 2: KEY PRINCIPLES OF THE CODE OF CONDUCT**

- 2.1 The general principles upon which this Code of Conduct are based are:

### **Public Service**

You have a duty to act in the interests of the SCJC of which you are a

member and in accordance with the statutory responsibilities of the SCJC.

**Selflessness**

You have a duty to take decisions solely in terms of the public interest. Unless appointed in your capacity as a member of a particular organisation or body, you should bear in mind at all times that your membership of the SCJC is not representational of any personal or professional group or any professional body. In particular, you should not allow any potential professional or personal interest or gain to influence your contribution to written or oral discussions within the SCJC.

**Integrity**

You must not place yourself under any financial or other obligation to any individual or organisation that might reasonably be thought to influence you in the performance of your duties.

**Objectivity**

You must make decisions solely on merit when carrying out SCJC business.

**Accountability and Stewardship**

You are accountable for your decisions and actions to the public. You have a duty to consider issues on their merits, taking account of the views of others and must ensure that the SCJC uses its resources prudently and in accordance with the law.

**Openness**

Subject to SCJC Standing Orders 11 and 13, you have a duty to be as open as possible about your decisions and actions, giving reasons for your decisions and restricting information only when the wider public interest clearly demands.

**Honesty**

You have a duty to act honestly. You must declare any private interests relating to your public duties and take steps to resolve any conflicts arising in a way that protects the public interest.

**Leadership**

You have a duty to promote and support these principles by leadership and example, to maintain and strengthen the public's trust and confidence in the integrity of the SCJC and its members in conducting public business.

**Respect**

You must respect fellow members of the SCJC and its employees and the role they play, treating them with courtesy at all times.

**SECTION 3: GENERAL CONDUCT**

**Allowances**

3.1 You must comply with any rules regarding remuneration, allowances and expenses.

**Gifts and Hospitality**

3.2 You must never canvass or seek gifts or hospitality.

3.3 You are responsible for your decisions connected with the offer or acceptance of gifts or hospitality and for avoiding the risk of damage to public

confidence in the SCJC. As a general guide, it is usually appropriate to refuse offers except:

- (a) isolated gifts of a trivial character or inexpensive seasonal gifts such as a calendar or diary, or other simple items of office equipment of modest value;
- (b) normal hospitality associated with your duties and which would reasonably be regarded as inappropriate to refuse; or
- (c) gifts received on behalf of the SCJC.

3.4 You must not accept any offer by way of gift or hospitality which could give rise to a reasonable suspicion of influence on your part to show favour, or disadvantage, to any individual or organisation. You should also consider whether there may be any reasonable perception that any gift received by your spouse or cohabitee or by any company in which you have a controlling interest, or by a partnership of which you are a partner, can or would influence your judgement. The term “gift” includes benefits such as relief from indebtedness, loan concessions, or provision of services at a cost below that generally charged to members of the public.

3.5 You must not accept repeated hospitality from the same source. You must inform the Secretariat of details of any gifts and hospitality received, which will maintain a record available for public inspection.

3.6 You must not accept any offer of a gift or hospitality from any individual or organisation which stands to gain or benefit from a decision the SCJC may be involved in determining, or who is seeking to do business with the SCJC, and which a person might reasonably consider could have a bearing on your judgement.

### **Confidentiality Requirements**

3.7 There may be times when you will be required to treat discussions, documents or other information relating to the work of the SCJC in a confidential manner. You will often receive information of a private nature which is not yet public, or which perhaps would not be intended to be public. There are provisions in legislation on the categories of confidential and exempt information and you must always respect and comply with the requirement to keep such information private.

3.8 It is unacceptable to disclose any information to which you have privileged access, for example derived from a confidential document, either orally or in writing. In the case of other documents and information, you are requested to exercise your judgement as to what should or should not be made available to outside bodies or individuals. In any event, such information should never be used for the purpose of personal or financial gain, or used in such a way as to bring the SCJC into disrepute.

## SECTION 4: REGISTRATION OF INTERESTS

4.1 The following paragraphs set out the kinds of interests, financial and otherwise which you have to register. These are called “registerable interests”. You must, at all times, ensure that these interests are registered, when you are appointed and whenever your circumstances change in such a way as to require change or an addition to your entry in the SCJC’s Register.

4.2 This Code sets out the categories of interests which you must register. Section 8 contains key definitions to help you decide what is required when registering your interests under any particular category. These categories are listed below with explanatory notes designed to help you decide what is required when registering your interests under any particular category.

### **Category One: Remuneration**

4.3 You have a registerable interest where you receive remuneration by virtue of being:

- employed;
- self-employed;
- the holder of an office;
- a director of an undertaking;
- a partner in a firm; or
- undertaking a trade, profession or vocation or any other work.

4.4 In relation to 4.3 above, the amount of remuneration does not require to be registered and remuneration received as a member does not have to be registered.

4.5 If a position is not remunerated it does not need to be registered under this category. However, unremunerated directorships may need to be registered under category two, “Related Undertakings”.

4.6 If you receive any allowances in relation to membership of any organisation, the fact that you receive such an allowance must be registered.

4.7 When registering employment, you must give the name of the employer, the nature of its business, and the nature of the post held in the organisation.

4.8 When registering self-employment, you must provide the name and give details of the nature of the business. When registering an interest in a partnership, you must give the name of the partnership and the nature of its business.

4.9 Where you undertake a trade, profession or vocation, or any other work, the detail to be given is the nature of the work and its regularity. For example, if you write for a newspaper, you must give the name of the publication, and the frequency of articles for which you are paid.

4.10 When registering a directorship, it is necessary to provide the registered name of the undertaking in which the directorship is held and the nature of its business.

4.11 Registration of a pension is not required as this falls outside the scope of the category.

#### **Category Two: Related Undertakings**

4.12 You must register any directorships held which are themselves not remunerated but where the company (or other undertaking) in question is a subsidiary of, or a parent of, a company (or other undertaking) in which you hold a remunerated directorship.

4.13 You must register the name of the subsidiary or parent company or other undertaking and the nature of its business, and its relationship to the company or other undertaking in which you are a director and from which you receive remuneration.

4.14 The situations to which the above paragraphs apply are as follows:

- you are a director of a board of an undertaking and receive remuneration – declared under Category One – and
- you are a director of a parent or subsidiary undertaking but do not receive remuneration in that capacity.

#### **Category Three: Contracts**

4.15 You have a registerable interest where you (or a firm in which you are a partner, or an undertaking in which you are a director or in which you have shares of a value as described in paragraph 5.7 below) have made a contract with the SCJC or the SCTS:

- (i) under which goods or services are to be provided, or works are to be executed; and
- (ii) which has not been fully discharged.

4.16 You must register a description of the contract, including its duration, but excluding the consideration.

#### **Category Four: Houses, Land and Buildings**

4.17 You have a registerable interest where you own or have any other right or interest in houses, land and buildings, which may be significant to, of relevance to, or bear upon, the work and operation of the SCJC.

4.18 The test to be applied when considering appropriateness of registration is to ask whether a member of the public acting reasonably might consider any interests in houses, land and buildings could potentially affect your responsibilities to the SCJC and to the public, or could influence your actions, speeches or decision-making.

**Category Five: Shares and Securities**

4.19 You have a registerable interest where you have an interest in shares which constitute a holding in a company or organisation which may be significant to, of relevance to, or bear upon, the work and operation of the SCJC. You are not required to register the value of such interests.

4.20 The test to be applied when considering appropriateness of registration is to ask whether a member of the public acting reasonably might consider any interests in shares and securities could potentially affect your responsibilities to the SCJC and to the public, or could influence your actions, speeches or decision-making. If in doubt, you may consult with the Secretariat or the Chair.

**Category Six: Non-Financial Interests**

4.21 You may also have a registerable interest if you have non-financial interests which may be significant to, of relevance to, or bear upon, the work and operation of the SCJC. It is important that relevant interests such as membership or holding office in other public bodies, clubs, societies and organisations such as trades unions and voluntary organisations, are registered and described.

4.22 The test to be applied when considering appropriateness of registration is to ask whether a member of the public acting reasonably might consider any non-financial interest could potentially affect your responsibilities to the SCJC and to the public, or could influence your actions, speeches or decision-making.

## **SECTION 5: DECLARATION OF INTERESTS**

### **Introduction**

5.1 The key principles of the Code, especially those in relation to integrity, honesty and openness, are given further practical effect by the requirement for you to declare certain interests in proceedings of the SCJC. Together with the rules on registration of interests, this ensures transparency of your interests which might influence, or be thought to influence, your actions.

5.2 The SCJC inevitably has dealings with a wide variety of organisations and individuals and this Code indicates the circumstances in which a business or personal interest must be declared. Public confidence in the SCJC and its members depends on it being clearly understood that decisions are taken in the public interest and not for any other reason.

5.3 In considering whether to make a declaration in any proceedings, you must consider not only whether you will be influenced but whether anybody else would think that you might be influenced by the interest. You must keep in mind that the test is whether a member of the public, acting reasonably, might think that a particular interest could influence you.

5.4 If you feel that, in the context of the matter being considered, your involvement is neither capable of being viewed as more significant than that of an ordinary member of the public, nor likely to be perceived by the public as wrong, you may continue to attend the meeting and participate in both discussion and voting. The relevant interest must however be declared. It is your responsibility to judge whether an interest is sufficiently relevant to particular proceedings to require a declaration and you are advised to err on the side of caution. Where there is dubiety or dispute as to whether or not a conflict arises, standing order 2.3 will apply.

### **Interests which Require Declaration**

5.5 Interests which require to be declared may be financial or non-financial. They may or may not be interests which are registerable under this Code. Most of the interests to be declared will be your personal interests but, on occasion, you will have to consider whether the interests of other persons require you to make a declaration.

### **Shares and Securities**

5.6 Any financial interest which is registerable must be declared. You may have to declare interests in shares and securities, over and above those registerable under category five of Section 4 of this Code. You may, for example, in the course of employment or self-employment, be engaged in providing professional advice to a person whose interests are a component of a matter to be dealt with by a board.

5.7 You have a declarable interest where an interest becomes of direct relevance to a matter before the SCJC and you have shares comprised in the share capital of a company or other body and the nominal value of the shares is:

- (i) greater than 1% of the issued share capital of the company or other body; or
- (ii) greater than £25,000.

5.8 You are required to declare the name of the company only, not the size or nature of the holding.

### **Houses, Land and Buildings**

5.9 Any interest in houses, land and buildings which is registerable under category four of Section 4 of this Code must be declared, as well as any similar

interests, which arise as a result of specific discussions or operations of the SCJC.

### **Non-Financial Interests**

5.10 Non-financial interests include: membership or holding office in other public bodies, clubs, societies, trade unions and organisations, including voluntary organisations. They become declarable if and when members of the SCJC might reasonably think they could influence your actions, speeches or decision making.

5.11 You will also have other private and personal interests and may serve, or be associated with, bodies, societies and organisations as a result of your private and personal interests and not because of your role as a member of the SCJC. In the context of any particular matter, you will have to decide whether to declare an interest. You should declare an interest unless you believe that, in the particular circumstances, the interest is irrelevant or without significance. In reaching a view you should consider whether the interest (whether taking the form of association or the holding of office) would be seen by a member of the public acting reasonably in a different light because it is the interest of a person who is a member as opposed to the interest of an ordinary member of the public.

### **Interests of Other Persons**

5.12 The interests known to you of relatives and close friends may have to be declared. This Code does not attempt the task of defining “relative” or “friend”. The key principle is the need for transparency in regard to any interest which might (regardless of the precise description of relationship) be objectively regarded by a member of the public, acting reasonably, as potentially affecting your responsibilities as a member of the SCJC.

### **Making a Declaration**

5.13 You must consider at the earliest stage possible whether you have an interest to declare in relation to any matter which is to be considered. You should consider whether agendas for meetings raise any issue of declaration of interest. Your declaration of interest must be made as soon as practicable at a meeting where that interest arises. If you do identify the need for a declaration of interest only when a particular matter is being discussed you must declare the interest as soon as you realise it is necessary.

5.14 The oral statement of declaration of interest should identify the item or items of business to which it relates. The statement should begin with the words “I declare an interest”. The statement must be sufficiently informative to enable those at the meeting to understand the nature of your interest but need not give a detailed description of the interest.

### **Effect of Declaration**

5.15 You must consider the relationship between the interests which have been declared and the particular matter to be considered and relevant individual circumstances surrounding the particular matter.

5.16 In the final analysis the conclusive test is whether, in the particular circumstances of the item of business, and knowing all the relevant facts, a member of the public acting reasonably would consider that you might be influenced by the interest in your role as a member of the SCJC and that it would therefore be wrong to take part in any discussion or decision-making. If you, in conscience, believe that your continued presence would not fall foul of this objective test, then declaring an interest will not preclude your involvement in discussion or voting. If you are not confident about the application of this objective yardstick, you must play no part in discussion and must leave the meeting room until discussion of the particular item is concluded.

### **Dispensations**

5.17 In very limited circumstances dispensations can be granted by a majority of the other members of the SCJC in relation to the existence of financial and non-financial interests which would otherwise prohibit you from taking part and making decisions on matters coming before the SCJC and its committees. Applications for dispensations should be made as soon as possible in order to allow proper consideration of the application in advance of meetings where dispensation is sought. You should not take part in the consideration of the matter in question until the application has been granted.

## **SECTION 6: LOBBYING AND ACCESS TO MEMBERS OF THE SCJC**

### **Introduction**

6.1 Participation by organisations and individuals in the decision-making process will be encouraged. Clearly however, the desire to involve the public and other interest groups in the decision-making process must take account of the need to ensure transparency and probity in the way in which the SCJC conducts its business.

6.2 You will need to be able to consider evidence and arguments advanced by a wide range of organisations and individuals in order to perform your duties effectively. Some of these organisations and individuals will make their views known directly to individual members. The rules in this Code set out how you should conduct yourself in your contacts with those who would seek to influence you. They are designed to encourage proper interaction between members of the SCJC and interest groups.

### **Rules and Guidance**

- 6.3 You must not, in relation to contact with any person or organisation who lobbies, do anything which contravenes this Code of Conduct or any other relevant rule of the SCJC or any statutory provision or act in any way which could bring discredit upon the SCJC.
- 6.4 The public must be assured that no person or organisation will gain better access to, or treatment by, you as a result of employing a company or individual to lobby on a fee basis on their behalf. You must not, therefore, offer or accord any preferential access or treatment to those lobbying on a fee basis on behalf of clients compared with that which you accord any other person or organisation who lobbies or approaches you. Nor should those lobbying on a fee basis on behalf of clients be given to understand that preferential access or treatment, compared to that accorded to any other person or organisation, might be forthcoming from another member of the SCJC.
- 6.5 Before taking any action as a result of being lobbied, you should seek to satisfy yourself about the identity of the person or organisation who is lobbying and the motive for lobbying. You may choose to act in response to a person or organisation lobbying on a fee basis on behalf of clients but it is important that you know the basis on which you are being lobbied in order to ensure that any action taken in connection with the lobbyist complies with the standards set out in this Code.
- 6.6 If you have concerns about the approach or methods used by any person or organisation in their contacts with you, you must seek the guidance of the Secretariat.

## **SECTION 7: SANCTIONS AVAILABLE TO THE LORD PRESIDENT FOR BREACH OF THE CODE**

- 7.1 Where it appears to the Lord President that a member is in breach of this code of conduct, the Lord President may:
- (a) censure – the Lord President may reprimand the member but otherwise take no action against them, or,
  - (b) issue a warning letter to the member advising that if conduct repeated or not corrected within a given period this could result in subsection 9(2) of the Act being invoked; or
  - (c) remove the member under subsection 9(2) of the Act.

## **SECTION 8: DEFINITIONS**

“A person” means a single individual or legal person and includes a group of companies.

“Any person” includes individuals, incorporated and unincorporated bodies, trade

unions, charities and voluntary organisations.

“Cohabitee” includes a person, whether of the opposite sex or not, who is living with you in a relationship similar to that of husband and wife.

“Group of companies” has the same meaning as “group” in section 474(10) of the Companies Act 2006. A “group”, within section 474(1) of the Companies Act 2006, means a parent undertaking and its subsidiary undertakings.

“Parent Undertaking” is an undertaking in relation to another undertaking, a subsidiary undertaking, if:

- a) it holds a majority of the voting rights in the undertaking; or
- b) it is a member of the undertaking and has the right to appoint or remove a majority of its board of directors; or
- c) it has the right to exercise a dominant influence over the undertaking (i) by virtue of provisions contained in the undertaking’s memorandum or articles or (ii) by virtue of a control contract; or
- d) it is a councillor of the undertaking and controls alone, pursuant to an agreement with other shareholders or councillors, a majority of the voting rights in the undertaking.

“Public body” means a devolved statutory public body or body corporate

“Related Undertaking” is a parent or subsidiary company of a principal undertaking of which you are also a director. You will receive remuneration for the principal undertaking though you will not receive remuneration as director of the related undertaking.

“Remuneration” includes any salary, wage, share of profits, fee, expenses, other monetary benefit or benefit in kind. This would include, for example, the provision of a company car or travelling expenses by an employer.

“Spouse” does not include a former spouse or a spouse who is living separately and apart from you.

“Undertaking” means:

- a) a body corporate or partnership; or
- b) an unincorporated association carrying on a trade or business, with or without a view to a profit.