

MEETING OF THE SCOTTISH CIVIL JUSTICE COUNCIL

WORKING GROUP

TUESDAY 8 NOVEMBER 2016 AT 12 NOON

**CONFERENCE ROOM, EDINBURGH SHERIFF COURT, 27 CHAMBERS
STREET, EDINBURGH**

MINUTES

Members Present: Sheriff Principal Abercrombie (SCJC member, Chair)

Sheriff Liddle

Jane MacDonald (SCTS, Legislation Implementation Team)

Marie-Louise Fox (SLAB representative)

Hamish Goodall (Scottish Government representative)

Elizabeth Ross (COPFS representative)

Jillian Martin-Brown (Advocate)

Rona Jamieson (Solicitor)

Alan McCloskey (Victim Support Scotland)

Support: Karen Stewart (Business and Policy Manager, Scottish Civil
Justice Council)

Caroline Mair (Deputy Legal Secretary, Rules Rewrite Drafting
Team)

Apologies: Sheriff Hughes (SCJC member)

Jackie Powell, (SCTS)

Item 1: Welcome, apologies and agreement of private papers

1. The Chairman welcomed those present and noted apologies from Sheriff Hughes and Jackie Powell
2. The working group agreed not to publish the following papers: **2.2, 3.1, 3.1A, 3.1B, 4.1, 4.1A**

Item 2: Previous meeting

Item 2.1 – Minutes of previous meeting (Paper 2.1)

3. **Members approved the minutes from the previous meeting subject to minor amendments in paragraphs 5 and 13.** There were no matters arising.

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

4. **Members noted the progress that had been made on actions since the last meeting.**
5. **Members agreed to reduce the consultation time period set out in the implementation timetable from 2 months to 6 weeks and agreed that this change be submitted to the Council for consideration and approval.**
6. **Members agreed to cancel the scheduled meetings in December and January as these were no longer required.**

Item 3: Proposals for rules

Item 3.1 Draft FAI Rules (Paper 3.1. 3.1A and B)

7. Caroline Mair introduced the draft rules for members' consideration. The working group considered and discussed the detail of the rules and prescribed forms and made a number of drafting suggestions.
8. In particular, the Working Group discussed: -
 - the decision to define “participant” as including the procurator fiscal;
 - the vires to include a set of inquiry principles in the rules;
 - the timeframes for the giving of the first order and within which the preliminary hearing and inquiry hearing should take place;

- what participants should be expected to do in advance of the preliminary hearing (this discussion took place within the context of the Crown's disclosure obligations) and the timescales for doing so;
- and a number of more minor technical drafting points.

9. **The Working Group agreed that it should be possible for a non-natural person to be represented by a lay representative at an inquiry.** The drafter would consider whether the rules should make express provision for this.

10. Elizabeth Ross raised concerns on behalf of the COPFS about draft Rule 2.5(1)(d)(iii) which allows the sheriff to make an order requiring a participant to make a payment to another participant to reflect the consequences of not complying with a rule or order. The question arose as to whether this rule could or should apply to the Crown. Other members shared those concerns but the decision was taken to leave this rule in the draft and consult on it.

11. **Caroline Mair undertook to consider all of the suggested revisions, produce an amended draft with comments embedded and share this with the Working Group.**

12. **The Working Group agreed that the revised draft rules be submitted to Council for consideration and approval to issue for the purpose of consultation.**

Item 4: Research and consultations

Item 4.1 Draft Consultation document (Papers 4.1, 4.1A)

13. **The Working Group considered the draft consultation document suggested that certain sections should be expanded upon and agreed that it be submitted to Council for consideration and approval.**

Item 5: AOCB

14. Caroline Mair sought approval to draft an article for the Journal of the Law Society of Scotland to coincide with the consultation on the draft FAI rules. **The request was approved.**

Item 6: Date of next meeting

15. Members noted the date of the next meeting:

- 28 February 2017 at 11am, Judges Conference Room, Parliament House, Edinburgh

Scottish Civil Justice Council Secretariat

November 2016

Approved