

SCOTTISH CIVIL JUSTICE COUNCIL

ACCESS TO JUSTICE COMMITTEE

MINUTES

PARLIAMENT HOUSE, 4.30PM, MONDAY 06 OCTOBER 2014

Members present: Lady Wise (Chair)
Kenneth Forrest (SCJC member)
Ruth Crawford QC (Advocate)
Ronnie Conway (Solicitor advocate, Bonnar Accident Law)
Catherine Molloy (Solicitor, East Lothian Council)
Employment Judge Joseph d'Inverno (SCJC member)
Lauren Wood (SCJC member)
Ian Maxwell (SCJC member)
Professor Frances Wasoff (SCJC member)
Denise Swanson (Scottish Government representative)
Colin Lancaster (Scottish Legal Aid Board)

In attendance: Mandy Williams (Deputy Head, Policy and Legislation Branch, SCS)
Yvonne Anderson (Depute in Charge of Offices of Court, Court of Session)
Luke McBratney (Deputy Legal Secretary, Rules Rewrite Drafting Team)
Carmen Murray (Policy Officer, SCJC)

Apologies: Sheriff Arthurson (Edinburgh Sheriff Court)

Item 1: Introduction, welcome, apologies and private papers

1. The Chair welcomed those present and noted apologies.
2. **Members agreed not to publish the following papers: 5.1, 5.2 and 6.1**

3. The Chair introduced Luke McBratney who had recently been appointed to the Rules Rewrite Drafting Team as one of the four new solicitors to work on this project.

Item 2: Previous Meeting

Item 2.1: Minutes of previous meeting [Paper 2.1]

4. **Members agreed the minutes from the previous meeting.**

Item 3: Proceedings

Item 3.1: Update on activity of the SCJC

5. Carmen Murray provided members with an update on the activity of the Scottish Civil Justice Council (SCJC) including an update on membership, research priorities, development of a new case management system, recent rules and a consultation on draft rules for the Extension of Simplified Divorce/Dissolution of a Partnership. **Members noted that the two Access to Justice literature reviews on party litigants and ADR had been approved for publication and that a visit to Citizens Advice Scotland had been planned for 20 October with a visit to the Faculty of Advocates to be arranged before the end of the year.**

Item 4: Forward Work Programme

Item 4.1: Update from the Scottish Government on legislative developments

Item 4.3: Update on the Courts Reform (Sc) Bill

6. Denise Swanson provided an update on progress in relation to the Courts Reform (Sc) Bill which was scheduled to complete Stage 3 on 07 October, the Taylor Review and the EU Directive and Regulation on Consumer ADR and ODR. **Members noted that the Scottish Government had offered to support a more detailed discussion on the Taylor Review at a later stage and were invited to provide any immediate comments via the Secretariat in the meantime.**

Item 4.2 Update from the Scottish Legal Aid Board on Making Justice Work Project 3: Enabling Access to Justice

7. Colin Lancaster provided members with an update on *Making Justice Work* Project 3, highlighting developments which had taken place since the last meeting, covering the strategic planning and co-ordination of publicly funded legal assistance, legal capability in connection to the Justice Digital Strategy and the Boards' ADR research proposal. Mr Lancaster also explained that the Board was soon to announce that funding had been granted to 16 new projects, including some which would specifically provide alternatives to attending court.

Item 4.4 Rules Rewrite: update

8. Luke McBratney provided an update on the progress of the Rules Rewrite Project and advised that the process guide for rules instruction had been approved by the SCJC. Members noted that the first set of rules under the project was being produced under the instruction of the PI Committee and that draft rules were expected to be prepared by February 2015.

Item 5: Access to Justice literature reviews on party litigants and ADR

Item 5.1: Summary of issues identified and next steps [Paper 5.1]

9. Members considered **Paper 5.1** which provided a summary of the issues which had been identified as a result of the literature reviews on party litigants and ADR and provided members with options on how to take work forward in these areas. **It was agreed to prioritise matters relating to the simple procedure and that further discussion on next steps should be carried forward to the Committee's meeting in January.**
10. Members discussed Annex A to **Paper 5.1**, a 'wish list' of management information which members had previously identified as being useful to its work. **It was agreed that Annex A should be provided to the ICT Committee and SCS, following some minor amendments.**
11. Ian Maxwell provided the Committee with a brief report on research undertaken by Families Need Fathers on lay representation in the sheriff court, which indicated that there may be a lack of understanding or lack of consistency in the application of the relevant court rules. **Members noted the relevance of the report provided by Mr**

Maxwell to the Committee's work in reviewing the arrangements for lay representation and asked to be kept apprised of any further research in this area.

Item 5.2: Lay Representation: Form 12.B.2 [Paper 5.2]

12. The Committee considered **Paper 5.2**, a policy proposal and draft Act of Sederunt to amend Form 12.B.2 to include a sixth declaration as to any 'conflict of interest' in relation to lay representation in the Court of Session. **Members noted that the term 'conflict of interest' would require further consideration to ensure that it could be easily understood by a lay person and would remedy the mischief which had been identified and were keen to note its desire to prepare draft rules in early course.**

Item 6: Simple Procedure

Item 6.1: Rules for a Simple Procedure [Paper 6.1]

13. Members considered **Paper 6.1**, a policy proposal on the development of rules for a new simple procedure in the sheriff court to replace small claims and ordinary procedure, for claims under £5,000. Key areas for consideration as identified at Annex C were discussed and members provided initial views to enable policy instructions to be developed. **It was noted that the next meeting in December would be solely focussed on consideration of a first draft of policy instructions for the new simple procedure rules.**

Item 7: Future business

Item 7.1: Date of Next Meeting

14. **Members noted that the next three meetings would take place on: 08 December 2014; 02 February 2015; and 09 March 2015. It was agreed that meetings should begin earlier in the afternoon to allow for fuller discussion and members were asked to contact the Secretariat to confirm which time would be most suitable.**

Item 8: A.O.C.B

15. There was no other business raised.

Scottish Civil Justice Council Secretariat

October 2014