

MEETING OF THE SCOTTISH CIVIL JUSTICE COUNCIL
ACCESS TO JUSTICE COMMITTEE
MONDAY 14 JUNE 2021 AT 2.00 PM
VIRTUAL MEETING – CISCO WEBEX

MINUTES

- Present:** Lady Carmichael (Chair)
Anne Dickson
Employment Judge d’Inverno
Thomas Docherty
Fiona Drysdale
Gillian Fyfe
Sheriff Martin-Brown
Sheriff Principal Turnbull
- In attendance:** Mark Kubeczka (SCTS Legislation Implementation Team)
Kay McCorquodale (Judicial Office and chair of SCTS Civil Lab)
Heather Simpson (SCTS Civil Lab)
- Support:** Jessica Flynn (Business Manager, Scottish Civil Justice Council)
Emma Laurie (Policy Officer, Scottish Civil Justice Council)
Craig McCorkindale (Director of Strategy, Scottish Civil Justice Council)
- Apologies:** Christina Bardsley
Joel Conn

Diane Machin

Dean Purdie

Denise Swanson (Scottish Government)

Item 1: Welcome, apologies and agreement of private papers

1. The Chair welcomed those present and noted apologies from Christina Bardsley, Diane Machin, Dean Purdie, Joel Conn and Denise Swanson. The Chair welcomed the Council's new consumer member Gillian Fyfe to her first Access to Justice Committee meeting.

Item 2: Previous meeting

Item 2.1 – Items considered by correspondence (Paper 2.1)

2. **Members noted Paper 2.1** which provided a summary of one matter considered by correspondence since the last meeting:

Access to Justice Committee – Civil Online Rules Review

- **Paper 2021/04** was issued on 1 February 2021 and invited members to consider and approve the publication for the document at **2021.04A**. This document sought views on the rule change, making the use of Civil Online mandatory for Simple Procedure claims.
- Responses were invited by close of business on Monday 14 February 2021. Seven responses were received. The paper was amended following comments from members and has subsequently been published on the SCJC website and sent to relevant stakeholders.

Item 3: Justice System Reform

Item 3.1 – Rules Review: Mandatory Use of Civil Online for Simple Procedure cases (Papers 3.1 and 3.1A-B)

3. **Paper 3.1** invited members to consider a set of suggested policy recommendations to be passed to the Scottish Civil Justice Council for consideration. These policy recommendations were based on the analysis contained in the consultation report at **paper 3.1A**. The report at **paper 3.1A** will

also be passed to the Council, before it is made available on the Council's website.

4. The chair invited Heather Simpson, SCTS, to speak to **paper 3.1B**. **Paper 3.1B** provided the Committee with an interim operational update on the impact that the mandatory use of Civil Online has made for the Court Service. The Committee was provided with further information on:
 - The development of Civil Online and the various phases in which it has been developed since SCTS' initial request to make its use mandatory for simple procedure cases, before the Covid-19 pandemic and;
 - The data provided in paper 3.1B, with further clarification on certain aspects such as user feedback and the volume of claims raised both online and on paper by party litigants and professional users;
 - The Application Programme Interface (API), which enables the bulk uploads of claims by some firms and clarification of how this platform is being developed by SCTS;
 - Why a small number of users have requested to proceed with their simple procedure claim on paper instead of Civil Online (as enabled by the exception test drafted in the rules). Reasons for requesting to proceed on paper include, not having access to the internet, no access to technology that connects to the internet or limited knowledge on how to use the system. SCTS highlighted that all of these requests have been accepted by the Sheriff to proceed on paper;
 - Accessibility and information relating to an Equality Impact Assessment (EQIA). It was confirmed that SCTS are planning to undertake a stakeholder engagement exercise to inform their EQIA. Members were advised that these stakeholders will be representative of groups that are classified as having protected characteristics, for example, disabled users. An assisted digital support strategy has also been prepared by SCTS and this will be shared with the Committee in due course.
5. The Legislation and Implementation Team (LIT) from SCTS provided additional operational advice in light of the questionnaire analysis in **paper 3.1**. LIT drew members attention to specific aspects of the Simple Procedure rules that may warrant further consideration when making policy recommendations to the Council.
6. In light of member's comments, Ms Simpson undertook to provide the Committee on further information on;

- The plans and strategic direction on what will be contained in the EQIA (although it was stressed that this is in the early stages of being prepared) and;
 - A further breakdown of data on civil online usage, as provided by the SCTS Management Information Analysis Team.
7. In concluding, it was noted by SCTS that Civil Online will be under continuous improvement and that the feedback on the user experience of both Civil Online and the API, contained in the questionnaire report at **paper 3.1A**, will be noted. Feedback from the Committee on the interim paper will also be incorporated in to a final operational update paper, to be shared with the Council by 30 June 2021.
8. Members then considered and discussed the matters arising from SCTS' paper and comments, along with the recommendations in paper 3.1;

Party Litigants

- Some members noted that they continue to have concerns of the impact on the rule mandating civil online for party litigants, particularly for access to justice reasons. One member also queried how data could be collected for party litigants who do not engage with the system at all.
- Some members also queried whether the term "mandatory" was suitable if party litigants are able to submit a claim on paper (with permission from the sheriff); they wondered if the language could be off putting to those looking to submit a claim.
- However, other members felt that the change has actually increased Access to Justice for some court users and that they have had positive feedback from party litigants using the system.

Data and Equality Considerations

- The Committee considered whether further information was required on the SCTS' EQIA and general equality considerations in relation to the mandatory change. Some members felt that until this information was provided, they could not provide a recommendation to the Council on whether the rules should remain in place.
 - Some members also queried consideration of rural users and internet speed in these areas and whether this group will be included in the EQIA. SCTS were also asked by members if socio-economic impacts would be considered.
 - It was noted that comparable data from SCTS would also be helpful in further assisting the members understanding before recommendations are made.
9. **In light of the above considerations, members agreed that they wished to consider further information and data before formulating policy**

recommendations to take to the Scottish Civil Justice Council regarding party litigants using Civil Online.

Professional Users

- Some members shared the sentiment that the rules are supportive of the general direction of the digitisation of courts more generally and that any changes should not move the system backwards.
- However, one member shared their particular concerns of the API for some professional users of the systems. They provided anecdotal evidence of the difficulty in integrating the API with their own case management system. They also suggested that further investment in this platform was required and that another sunset clause should be drafted to enable further data collection on the use of the API.
- SCTS highlighted that the API will not be suitable for all professional firms to use and that there is no assumption that firms have to use it if they are unable to. For professional users unable to access the API, they will be able to register cases using civil online instead.

10. Members agreed to a provisional recommendation that, in principle, mandatory use of Civil Online and the API should be retained for professional users.

Item 4: AOB

11. Members agreed not to publish the following papers: 3.1; 3.1A-B

Item 5: Date of next meeting

12. To be circulated.

Scottish Civil Justice Council Secretariat

June 2021