

# SCOTTISH CIVIL JUSTICE COUNCIL

## ACCESS TO JUSTICE COMMITTEE

### MINUTES

PARLIAMENT HOUSE, 2.00PM, MONDAY 09 DECEMBER 2013

**Members present:** Lady Wise (Chair)  
Sheriff Arthurson (Edinburgh Sheriff Court)  
James Wolffe QC (Advocate)  
Kenneth Forrest (Advocate)  
Ronnie Conway, (Solicitor, Bonnar & Co.)  
Catherine Molloy (Solicitor, East Lothian Council)  
Judge Joseph d'Inverno (Employment judge, SCJC member)  
Prof. Frances Wasoff (SCJC member)  
Lauren Wood (SCJC member)  
Ian Maxwell (SCJC member)  
Denise Swanson, (Scottish Government representative)  
Colin Lancaster (Director of Policy and Development, Scottish Legal Aid Board)

**In attendance:** Yvonne Anderson (Depute in Charge of Offices of Court)  
Neil Christie (Office Manager, Dumbarton Sheriff Court)  
Ondine Tennant (Deputy Secretary to the Scottish Civil Justice Council)  
Elise McIntyre (Deputy Legal Secretary to the Lord President)  
Lisa Gamble (SCJC Secretariat)  
Carmen Murray (SCJC Secretariat)

#### **Item 1: Introduction, welcome, apologies and private papers**

1. Lady Wise welcomed those present to the first meeting of the Access to Justice Committee. No apologies had been received. No papers were to be considered private.

## **Item 2: Proceedings**

### *Item 2.1: Standing Orders (Papers 2.1 and 2.1A)*

2. **The Committee noted the Standing Orders of the Scottish Civil Justice Council and in particular the standing orders applicable to committees. Members were directed particularly to Standing orders 1.6 and 1.7. The Committee also noted the intention of the SCJC to review the detail of these procedures in spring 2014.**
3. **It was noted that the Standing Orders provide that papers relating to Council and committee meetings will routinely be published on the SCJC website, with the exception of any confidential items. The Committee noted that all communications with the press should be made through the Secretariat.**

### *Item 2.2: Access to Justice Committee remit and membership (Papers 2.2 and 2.2A)*

4. There was some discussion as to the extent of the Committee's remit with regard to representation. The Chair clarified that the Committee was tasked at this stage with reviewing the arrangements for party litigants and lay representatives and lay support. The development of the new 'simple procedure' as part of civil courts reform was considered to be one of the Committee's key priorities.
5. It was remarked that other SCJC committees would likely have an interest in Alternative Dispute Resolution methods but that that this would be a matter of particular relevance to this committee, as reflected in its remit.
6. **The Committee noted the remit and membership of the Access to Justice Committee.**

### *Item 2.3 Freedom of Information (Scotland) Act 2002 (Papers 2.3 and 2.3A)*

7. Members were advised that the SCJC has been added to the list of Scottish Public Authorities to whom the Freedom of Information (Scotland) Act 2002 (FOISA) applies. **The Committee noted that information produced in the course of its business will be subject to FOISA.**
8. **The Committee noted the terms of the Publication Scheme and Guide to Information adopted by the SCJC and that the SCJC Secretariat would produce FOISA guidance for members in due course.**

### **Item 3: Forward Work Programme**

#### *Item 3.1 Update from the Scottish Government on legislative developments*

9. Denise Swanson provided an oral update from the Scottish Government on the following initiatives of interest to the Committee: Courts Reform (Sc) Bill; Damages (Sc) Bill; Member's Bill on Apologies; Bankruptcy and Debt Advice (Sc) Bill; Victims and Witnesses (Sc) Bill and Sheriff Principal Taylor's Review of Expenses and Funding of Civil Litigation in Scotland.

#### *Item 3.2 Making Justice Work programme and SCJC Annual Programme (Paper 3.2)*

10. Ondine Tennant provided an oral update on the Scottish Government's *Making Justice Work (MJW)* Programme, explaining the timescale of the programme, the various work-streams, and how the work of the SCJC and its committees is incorporated within the *MJW* Programme.
11. An update was also given as to the SCJC's Annual Programme, noting that there would be more clarity as to the timescales for the work of the Committee following the report to be produced by the Rules Rewrite Working Group (RRWG), which was considering the timetable for the Rules Rewrite Project.

#### **12. Members noted the following:**

- a. **the plans in hand for court visits for SCJC members and lay committee members;**
- b. **the SCJC's annual programme for 2014/15 will be prepared in spring 2014. This will include details of the timescales and phases for the rules rewrite project, following the consideration of these matters by the Rules Rewrite Working Group;**
- c. **further work is underway in relation to the implications of the Scottish Government's 2014/14 legislative programme on the work of the SCJC and that further advice as to the individual items of legislation referred to in the current programme will be provided in due course; and**
- d. **the proposal to carry out a review of the SCJC's operations and structure, including its membership and the arrangements relating to committees, as part of the preparation of its annual report for 2013/14.**

#### **Item 4: Review of Arrangements for Party Litigants**

##### *Item 4.1 Initiatives underway in England and Wales (Paper 4.1)*

13. Kenneth Forrest and Prof. Frances Wasoff, as members of the RRWG, provided an oral update on the Group's recent visit to England and Wales to meet academics and members and staff of the Civil Justice Council and Civil Procedure Rules Committee, to discuss the experience in that jurisdiction of implementing the Woolf and Jackson Reforms. It was noted that the focus of the visit was in respect of rules and methodology, but that in so doing, the Group ascertained a wide range information in relation to arrangements for litigants in person. **The Committee noted the activity that had been carried out in England and Wales in this regard.**
14. **The Committee instructed the Secretariat to carry out a literature review of materials available in respect of arrangements for party litigants and the information available to them, the arrangements for lay representation and support and the use of ADR in Scotland and other similar jurisdictions. It was also thought that it would be helpful to include information on case management.**
15. The following initiatives and research areas relevant to the review were discussed.
  - a. **Use of language:** the need for rules and practice directions to be clear and simple to understand.
  - b. **Legal capability:** Members of the public must be aware of the legal options available to them. Colin Lancaster explained that there is research available as to how to design information with no assumptions as to skills or knowledge and that work was underway in relation to legal capability under the auspices of the MJW programme, including the development of a toolkit which would include items such as draft letters. **Colin Lancaster agreed to forward further information on the project and relevant research to the Secretariat.**
  - c. **Access to advice:** it was considered that the ability to access to advice, from a legally qualified source or otherwise, is critical to the principle of access to justice and that it is important that those without access to legal representation have sufficient information available to them. The Scottish Government commissioned research into the use of in-court advisers and mediators in the Small Claims Court was mentioned in this regard.

- d. **Low incidence rate of litigation in Scotland:** the lower incidence of litigation in Scotland was discussed. It was remarked that it was unclear whether this reflected obstacles to accessing the courts or otherwise.
- e. **Guidance for party litigants and lay representatives/supporters:** the availability of appropriate and accurate guidance was considered crucial. It was noted that a range of organisations produce guidance for litigants and it was felt that there was a need to ensure it is consistent. It was noted that guidance produced for litigants and lay representatives in England and Wales is regularly mistaken as being applicable in Scotland. The Committee considered its role in the development of any such guidance and noted that at this stage its role was to review the guidance and information available, rather than to prepare it. However, it was noted that the Committee may make recommendations in this regard.
- f. **Case management:** it was remarked that it would be necessary to have clarity on whether only the proposed summary sheriff would be hearing simple procedure cases, or whether existing sheriffs would also in order that appropriate training could be undertaken. **Judge d’Inverno agreed to provide information on case management within the Employment Tribunal, where pro-active case management is provided. It was noted that a working group of the Sheriff Court Rules Council had previously considered mediation and the role of the sheriff.**
- g. **Alternative Dispute Resolution (ADR) methods:** Mr Lancaster advised that a review of ADR in family cases in other jurisdictions had been commissioned, as well as a domestic review of the availability of ADR in the UK and another in relation to the Small Claims Court, to gauge the impact of in-court advisers and mediators. **Mr Lancaster agreed to provide the Secretariat with further information on each.** The EU Directive on ADR and Online Dispute Resolution (ODR) was also discussed. Denise Swanson indicated that the Scottish Government was about to begin a series of meetings with stakeholders around implementation of the Directive and would involve the Secretariat in relevant discussions.

16. **Members agreed to forward any materials they were aware of which might be relevant to the review to the Secretariat in the week commencing 6 January 2014.**

**Item 5: Future business**

*Item 5.1 Dates of future meetings (Paper 5.1)*

17. **Members were advised that, it would be necessary to reschedule the meeting on 10 February 2014 until 24 February 2014. Members noted that the next meeting thereafter would be 07 April 2014.**

**Item 6: A.O.C.B**

18. No other business was raised.

**Scottish Civil Justice Council Secretariat  
December 2013**