

# SCOTTISH CIVIL JUSTICE COUNCIL

## ACCESS TO JUSTICE COMMITTEE

### MINUTES

PARLIAMENT HOUSE, 3.00PM, MONDAY 2 NOVEMBER 2015

**Members present:** Sheriff Arthurson (Chair)  
Employment Judge Joseph d'Inverno (SCJC member)  
Ruth Crawford QC (Advocate)  
Professor Frances Wasoff (Edinburgh University, SCJC member)  
Ian Maxwell (Families Need Fathers, SCJC member)  
Lauren Bruce (Consumer Representative, SCJC member)  
Colin Lancaster (Scottish Legal Aid Board)  
Denise Swanson (Scottish Government)

**In attendance:** Nicola Anderson (Policy and Legislation Branch, SCTS)

**Secretariat:** Luke McBratney (Deputy Legal Secretary, RRDT)  
Neil Deacon (Deputy Legal Secretary, LPPO)  
Kenny Htet-Khin (Head of the Rules Rewrite Drafting Team)  
Bridget Lee (SCJC Secretariat)

**Apologies:** Lady Wise  
Ronald Conway (Solicitor Advocate)  
Kenneth Forrest (Advocate, SCJC member)  
Paul Reid (Solicitor, SCJC member)  
Catherine Molloy (Solicitor)  
Yvonne Anderson (Depute in Charge of Offices of Court)

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

1. Sheriff Arthurson was in the Chair as Lady Wise was unable to attend. The Chair welcomed all those present to the meeting and noted that the main focus of the meeting would be considering the draft Simple Procedure rules, and the consultation paper about them, for submission to the SCJC.

2. **As discussion of Item 5 was likely to be lengthy, it was agreed that Item 4.4 would be discussed after consideration of Item 5.**
3. **Members agreed not to publish Papers 2.2, 4.4, 4.4A, 5.1 & 5.1A.**
4. **Apologies were noted.**

## **Item 2: Previous Meeting**

*Item 2.1: Minutes of previous meeting [Paper 2.1]*

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

*Item 2.2: Progress of actions from previous meetings [Paper 2.2]*

6. **The Committee noted the progress of actions from previous meetings.**

## **Item 3: Proceedings**

*Item 3.1: Update on activity of the SCJC*

7. **It was noted that an update would be circulated with the minutes.**

## **Item 4: Forward Work Planner**

*Item 4.1: Update from the Scottish Government on legislative developments [ORAL]*

8. Denise Swanson provided an update on legislative developments in the Scottish Government. There may be a slot for a Taylor Bill in the next session. Multi-party actions are under consideration again and a stakeholder reference group, to take views by email, is being set up. The remaining courts reform instruments are to be laid in the near future. The Fatal Accident Inquiries Bill begins Stage 2 on 3<sup>rd</sup> November and the Succession Bill will be commencing Stage 2 shortly in the Delegated Powers and Law Reform Committee (DPLRC), with Stage 1 likely to be in December.

9. *Item 4.2: Update from the Scottish Legal Aid Board on Making Justice Work Project 3: Enabling Access to Justice [ORAL]*
10. Colin Lancaster provided an oral update on Making Justice Work Project 3. The MJW Project 3 has formally closed but the work is continuing. There was a planning and coordination systems event the previous week with 280 delegates from across the advice sector. This was a constructive event that looked at outcomes, wider public policy standards and performance management. SLAB grant funding to advice services has been extended to next September and over 100 projects are continuing. SLAB are restarting the audit process for advice services using Scottish National Standards.
11. The ADR research is progressing. The fieldwork is underway with users, sheriffs and court staff. SLAB will give further reports on this work at future meetings.
12. *Item 4.3: Rules Rewrite: Update [ORAL]*
13. Luke McBratney provided an update on the work of the Rules Rewrite team since the last meeting. The DPLRC report on the errors in statutory instruments for 2014 had shown a considerable reduction in errors reported for LPPO which reduced the need for corrective instruments. The Sheriff Appeal Court (Criminal) has had its first hearing and the rules for the Sheriff Appeal Court (Civil) will be made on 1st January 2016. After two more SCJC instruments have been made on solicitors' fees and consequentialia there remains the 'sweep-up' of the remaining provisions in the Courts Reform (Scotland) Act 2014 that require court rules such as lay representation for non-natural persons and the Gill recommendations that can be taken forward with new court rules without primary legislation. The comprehensive rewrite of the Sheriff Court and Court of Session rules will then begin.

## **Item 5: Simple Procedure**

### *Item 5.1: Rules for a Simple Procedure [Papers 5.1 and 5.1A]*

14. The Committee considered **Paper 5.1**, which set out the current position on the draft simple procedure rules and **Paper 5.1A**, the draft consultation paper on the

simple procedure rules and the draft rules. Members were asked to email comments on the format and wording of the rules to the Secretariat.

- 15. The Committee agreed that the consultation paper should be submitted to the Council's next meeting for approval to issue the consultation on the draft Simple Procedure Rules, subject to some minor amendments to both the consultation paper and the draft rules.**

*Item 4.4: Lay representation: discussion paper by Ian Maxwell [Papers 4.4 & 4.4A]*

16. The Committee considered **Papers 4.4 and 4.4A**. It was pointed out that when considering expanding the rights of lay representatives it would be necessary to consider the corollary of increasing their responsibilities as well. Consideration would also need to be given to whether accreditation, quality assurance and a complaints system would be beneficial, and how these would be funded. The question of whether lay representatives should be paid would also need to be explored. There are currently different rules relating to lay representatives in the Court of Session and the Sheriff Court and any review of the rules in this area should examine the topic of lay representation as a whole rather than piecemeal.
- 17. The Committee noted papers 4.4 and 4.4A and asked the Secretariat to prepare a paper for the next meeting setting out proposals for a review of lay representation and related areas.**

#### **Item 6: Future Business**

*Item 6.1: Dates of meetings*

- 18. Members noted that when the dates of meetings in 2016 have been confirmed they will be informed.**

#### **Item 7: A.O.C.B**

19. It was noted that Members had received notification by email of amendments to both the SCJC Standings Orders and Expenses Scheme.

20. There was no other business raised.

**Scottish Civil Justice Council Secretariat**

**November 2015**