

**MEETING OF THE SCOTTISH CIVIL JUSTICE COUNCIL
ACCESS TO JUSTICE COMMITTEE
MONDAY 13 JUNE 2022 AT 4.00 PM
VIA WEBEX**

MINUTES

Present: Lady Carmichael (Chair)
Joel Conn
Employment Judge d'Inverno
Fiona Drysdale
Justin Haccius
Dean Purdie
Hazel Thoms

Attending: Craig Anderson (Court of Session)
Rona McLeod
Marisa Strutt (Scottish Government)
Daniel Garraghan (Scottish Government)

Support: Jessica Flynn (SCJC)
Karen Stewart (SCJC)
Paula Preston (SCJC)

Item 1: Welcome, apologies and agreement of private papers

1. The Chair welcomed those present and noted apologies from: Sheriff Principal Turnbull, Sheriff Martin-Brown, Thomas Docherty, Kirsty Hyslop, Gillian Fyfe and Denise Swanson. The Chair welcomed Rona McLeod who was attending as an observer at the Chair's request.
2. Members agreed that the following private papers will not be published: Papers 4.1, 4.1A.

Item 2: Previous meeting

Item 2.1 Items considered by correspondence (Paper 2.1)

3. **Paper 2.1** provided a summary of one matter considered by correspondence since the last meeting. In considering matters by correspondence, members are advised that a nil response will be treated as consent, unless noted otherwise.

- Item 2022/04 was issued on 16 March 2022 and invited members to approve the draft minutes of the Committee meeting on 14 March 2022. Responses were invited by close of business on 23 March 2022. One response was received noting a minor amendment. The revised minutes were approved and published on the Council website.

Item 3: Work Programme

Item 3.1 Committee engagement activities (Oral update)

4. The Chair provided an overview of the proceedings at a recent Access to Justice Committee stakeholder engagement event held on 30 May 2022. The event included contributors from 4 University Law Clinics and an In-Court Advisor service and discussions were focussed on 2 specific subjects:
 - *Court Rules, Practice and Procedure* - What issues relating to court rules, practice and procedure are having a negative impact on access to justice, and what should be done to resolve such issues?
 - *Experience of virtual hearings during the pandemic* - What were the challenges and the benefits experienced by court users during the pandemic and what learning should be taken from this where hybrid model of hearings may continue.
5. Members agreed that further engagement would be beneficial on the topics of modes of attendance and digital poverty. This could be taken forward in due course when the Council's proposals on modes of attendance are clearer. It was noted that the Scottish Government is undertaking work to consider court users' experience during the pandemic so outputs from this work would be a useful resource to tap into.
6. Members agreed in principle that a further event could be considered for early Autumn.

Item 3.2 Scottish Government Legislative Update (Oral update)

7. The Chair welcomed Justin Haccius who provided a legislative update. In particular it was noted that work is progressing with the Legal Services Bill and that independent work on consideration of the consultation outputs is nearing completion and will be issued soon. The Bill team is also consulting with the Law Society of Scotland and the Faculty of advocates. It is anticipated the Bill will be laid in March 2023.

8. Much consultation is ongoing in relation to a draft Legal Aid Bill with some temporary 'covid' fees measures being made permanent for example, interim fee payments to advocates. It is anticipated that it will be 2024 before this Bill is laid.

Item 3.3 Scottish Government: Human Rights Bill (Presentation and Q&A)

9. The Chair welcomed Marisa Strutt and Daniel Garraghan from the Scottish Government Bill Team. They provided background on the National Taskforce for Human Rights Leadership which made a number of recommendations in relation to access to justice. They advised that the Bill Team's work to date has included: consideration of the Taskforce report and a lot of engagement on access to justice, including via:
 - Access to Justice workshops
 - Lived Experience Board
 - Executive Board
 - Advisory Board
10. From that engagement and the Taskforce report some conclusions and high level policy objectives have been identified which will be explored and developed in ongoing engagement with justice partners, key stakeholders and in continued work with the above Boards. There was a question and answer session focussing mainly on the prospective structure of the Bill and the Committee's interest in potential rule requirements.
11. The Bill Team advised that Scottish Ministers have committed to introducing a Human Rights Bill during the current Parliamentary Session (2021-26) and that per the current Programme for Government the Scottish Government will consult on the Bill this year. The team agreed to maintain contact as matters progress and to liaise with the Secretariat in relation to any prospective rule requirements arising.

Item 4: Justice System Reform

Item 4.1 Simple Procedure Special Claims: Consideration of draft rules in eviction cases (Papers 4.1, 4.1A)

12. The Chair introduced **Paper 4.1** which invited members to review the draft Simple Procedure Special Claims Rules – Part 21: Eviction (**Paper 4.1A**) and to consider proposed amendments to these rules which are based upon the outputs from the Simple Procedure Rules Review ("the Review").

13. The approach to special claims recommended by the Committee and approved in principle by Council was to insert a new chapter into the Simple Procedure Rules (“SP Rules”) for each type of special claim. Each chapter would contain new rules, or modifications of existing rules, required to give effect to necessary differences in procedure from a standard case.
14. The draft instrument was approved in principle by Council in May 2017 pending the outcome of the Review. The special claims provided for in the draft instrument are:
 - Eviction Claims – Part 21;
 - Personal Injury Claims – Part 22;
 - Multiplepoinding Claims (determining the rights of part(s) to a fund/ property) – Part 22; and
 - Aliment Claims – Part 24
15. As well as these new Parts, provision is also made in the instrument regulating certain procedural matters in actions of furthcoming (enforcing an action by arrestment of property/sums).
16. Following the Review, a number of changes have been made to the SP Rules to streamline the procedures, forms and standard orders to create operational efficiencies. Members noted that the revised rules instrument has been submitted to the Court of Session for consideration. The key purpose of the Review was to consider what improvements could be made to the SP Rules prior to implementing rules for special claims. The Secretariat has now begun the process of reconsidering the draft special claims rules in light of the outputs from the Review.
17. It is intended that each chapter of the special claims rules will be scrutinised against the amended SP Rules and reviewed to ensure that the process aligns overall and that any departures from core procedure are appropriate and proportionate. Any proposals for amendment of the draft special claims chapters will be set out in a paper and considered by the Committee.
18. Members considered and discussed the draft rules dealing with eviction cases. Members’ deliberations included consideration of written comments received from SCTS Legislation Implementation Team. The Committee agreed a number of drafting amendments were required and that additional consideration was necessary on certain matters.

Changes to Rules

Draft rule 21.2 What is an eviction claim?

19. Members noted that legal advice will be obtained to ensure that all draft definitions within the instrument are accurate and reflect current legislation.

Draft Rule 21.6 What do you do with an eviction claim form?

20. Members noted that the recently made Act of Sederunt (Simple Procedure Amendment) (Civil Online) 2022 requires all simple procedure claims to be submitted using Civil Online or the internet interface to the Scottish Courts and Tribunals Service's case management system. These rules came into force on 31 March 2022 for all actions raised after that date.
21. The draft rule reflects the use of previous paper based systems and will need to be amended to align the procedure for submitting eviction claims to the court with the new mandatory provisions for submitting claims within the SP Rules.
22. If an Eviction Claim Form has been completed on paper and indicates that the claimant would like the sheriff clerk to formally serve the Claim Form, then two copies of that form must be sent to the court - a rule to this effect will be drafted.

Draft rule 21.7 What will the court do with the Eviction Claim Form?

23. As part of the Review's streamlining of court forms, the procedure for handling a number of miscellaneous applications has been revised, including the procedure for applying for a change of timetable. Members agreed that the procedure for a change of timetable in eviction cases should be aligned with that of the SP Rules. In this regard, the new Additional Orders Application (Form 9A) and rules under Part 9 are to regulate an application for a change of timetable in an eviction case. The draft rules will be amended to this effect.

Draft Rule 21.8 How can the Eviction Claim Form be formally served on the respondent?

24. *Subsection 2* provides circumstances whereby the sheriff clerk may formally serve the claim form and as currently drafted aligns with the SP rules. The Committee considered that the wording of the provision may require clarification in relation to service of claims by Local Authorities. It was agreed that the policy intention of the rule is not to place any obligation upon SCTS for the formal service of claims raised by Local Authorities. The matter will be canvassed with the legal drafter.
25. *Subsection (3)(b)* provides when formally serving an Eviction Claim Form, the envelope must contain "Further Claimant Forms or Further Respondent Forms". The Committee noted that these forms and related procedural rules have now

been omitted from the SP Rules. As noted in Paragraph 36 below, it is intended that parties' details will appear on a summary front page of the Eviction Claim Form. The Committee agreed that this provision will be deleted to align the procedure with the SP Rules.

26. *Subsection (3)(g)* of the draft rule currently refers to service of “*any other document approved by sheriff principal in that sheriffdom*”. Members noted that this provision is found in Rule 5.9(c) of the current Summary Cause Rules 2002. The Committee noted that there may be potential for this provision to give rise to inconsistency in practice across the sheriffdoms. It was agreed that the background of the rule should be investigated further with a view to considering the utility of the provision.
27. The Committee agreed that the inter-relationship between draft rules 21.8, 21.9 and SP Rule 18.2 require further consideration. The wording of SP Rule 18.2, which regulates the methods of formal service of documents on persons living in Scotland was canvassed previously by the Committee when the amended SP Rules were approved. At that time, it was agreed that the current requirement to formally serve a claim in the first instance, by postal service which records delivery is to be reconsidered when work on special claims is taken forward. This is to ensure the wording of the rule does not obstruct the commencement of urgent business. The matter will be canvassed with the legal drafter.

Draft Rule 21.10 How do you respond to an eviction claim?

28. The SCJC minute from May 2017 approved an amendment to the draft rule to clarify that the respondent may submit an Eviction Response Form, if they wish. This was on the basis that it is the policy intention that the respondent is not obligated to complete an Eviction Response Form (unless ordered to do so by the sheriff). The Committee considered that the rule would benefit from clarification in this regard and the legal drafter will be consulted with a view to amending the rule.

Draft rule 21.11 What responses can you make?

29. This rule includes certain provisions for the lodging of time to pay applications. The Committee agreed that the rule would benefit from clarification on the options available to respondents. The rule will be amended in this regard.

Draft rule 21.13 What is an eviction case discussion?

30. The Committee considered the draft provisions and agreed that they require some revision to align them with changes to the SP Rules to ensure they work effectively in practice. In particular:
- Members noted that the impact of the pandemic has resulted in the wider use of remote hearings in the civil justice system over the past two years. In this regard, the SP Rules provide that a case management hearing may take

place in a courtroom, by video-conference, conference call, or in any other form or location ordered by the sheriff. The current draft rule provides that an eviction case discussion is to take place in a courtroom. The Committee considered to what extent the provisions for location of an eviction case discussion could be aligned with those for a case management hearing. The majority of members agreed that the default position is that an eviction case discussion should take place in person in a courtroom. It was agreed that the practicalities of making additional rules making provision to facilitate remote hearings will be considered.

- Since the respondent is not obliged to send an Eviction Response Form prior to the eviction case discussion, the sheriff may order the respondent to send one. A drafting amendment was proposed to clarify the position.
- a minor drafting amendment was proposed to align the rule with the provisions of the SP Rules.

Draft rule R21.14 What sort of decisions can the sheriff make in an eviction claim?

31. Specific provisions relating to eviction claims are provided for here. The Committee agreed that subsection 2 should be deleted as it provides guidance information rather than procedural regulation. A rules amendment will be instructed to this effect.

Draft rule 21.15 When can a decision of the sheriff in an eviction case be recalled?

32. The Committee noted that the SP Rules were significantly revised to simplify the provisions on recall of decree. The draft provisions for special claims eviction cases follow the same format as the original SP rules. It was therefore agreed that the draft rules be amended to align with the revised provisions in the SP Rules.

Draft rule 21.16 How can a party in an eviction case recall a decision of the sheriff?

33. In addition, the Committee agreed by majority that any decision to recall a decree should be a matter for judicial discretion and that the draft rule should be revised to clarify this policy position. In order to provide a procedural safeguard and in the interests of justice to respondents, members agreed that the provision permitting a case to be recalled only once will be deleted.

Changes to Forms

34. The Committee discussed whether or not further consultation would be necessary on the content of any new forms. It was agreed that since the forms

will be based on the new streamlined forms developed following the Review, that further consultation would not be necessary.

35. Form 21A – the draft Eviction Claim Form will require amendment to streamline it in a similar manner to the Simple Procedure Claim Form. The revised form should contain the details of the parties and orders sought in a summary front page (with guidance retained for the benefit of party litigants). The text box in the form where the case reference number is added by the court will be repositioned at the top of the form.
36. The Committee instructed the secretariat to consult with SCTS Legislation Implementation Team and discuss prospective amendments directly with LPPO with a view to providing a revised draft form for members' consideration and approval.
37. Form 21D - the draft Eviction Response Form will require amendment to streamline it in a similar manner to the Simple Procedure Response Form. The Committee instructed the secretariat to consult with SCTS Legislation Implementation Team and discuss prospective amendments directly with LPPO with a view to providing a revised draft form for members' consideration and approval.
38. Form 21E – the draft Eviction Decision Form will require to be reviewed to identify any potential amendments. The Committee instructed the secretariat to consult with SCTS Legislation Implementation Team and discuss prospective amendments directly with LPPO with a view to providing a revised draft form for members' consideration and approval.
39. There were some minor drafting queries which it was agreed the secretariat would discuss directly with the legal drafters.

Item 5: AOB

40. There was no other business raised.

Item 6: Date of next meeting

41. The next meeting is on 12 September 2022 at 4.00 pm via Webex.

**Scottish Civil Justice Council Secretariat
June 2022**