

MEETING OF THE SCOTTISH CIVIL JUSTICE COUNCIL

ACCESS TO JUSTICE COMMITTEE

16 JANUARY 2023 AT 4.15 PM

VIA CISCO WEBEX

MINUTES

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

Attending: Craig Anderson (Court of Session)
Chris Fyffe (Court of Session)
Kirsty Hyslop (SCTS)

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

Item 1: Welcome, apologies and agreement of private papers

1. The Chair welcomed those present and noted apologies from: Gillian Fyfe and Thomas Docherty.
2. Members agreed that the following papers would not be published: Papers 4.1, 4.1A & B

Item 2: Justice System Reform

Simple Procedure Special Claims: draft rules in personal injury cases - continued consideration of papers from 20 December 2022 (Papers 4.1, 4.1A & B)

3. The Committee continued consideration of **Papers 4.1** which discussed Part 22 of the draft Special Claims Rules instrument for personal injury claims. The draft

chapter has been scrutinised against the amended Simple Procedure Rules and reviewed to ensure that the process aligns overall and that any departures from core procedure are appropriate and proportionate.

4. The Committee made the following decisions on the draft rules in Part 22 of the Special Claims Rules instrument:

(i) *Draft rule 22.14 What is the adjustment period?*

- The draft rule provides that parties may adjust their respective claim/response forms in accordance with the Personal Injury Timetable. The Committee agreed that no amendments to the draft rule are required.

(ii) *Draft rules 22.15 & 16 How can the parties adjust their respective claim/response forms?*

- The committee agreed that there are no policy issues to consider and no amendments to the rule are required. The Committee invited the Secretariat to consult with LIT to review the content of related Forms 22G & H and to provide revised drafts for members' consideration and approval.

(iii) *Draft rule 22.17 What is a valuation form?*

- The draft rule sets out the purpose and content of the valuation form (Form 22I) and the duties of the party when lodging it along with any supporting documents. This generally follows the existing requirements in summary cause procedure. The Committee agreed that no amendments to the rule are required. The Committee invited the Secretariat to consult with LIT to review the content of Form 22I and whether there is a need for a bespoke 'list of documents form' referred to therein. This is with a view to ensuring procedures for lodging documents are streamlined and consistent throughout the rules. A revised draft is to be prepared for members' consideration and approval.

(iv) *Draft rule 22.18 When will the hearing take place?*

- The draft rule provides that the hearing is allocated in the first written orders and is to be between 4 and 9 months of the PI response form being sent to the court. This generally follows the existing timescales under summary cause procedure. The draft rule provides that the sheriff is later required to make an order to confirm the hearing. The Committee agreed that no amendments to the rule are required.

(v) *Draft rule 22.19 How can the claimant ask the sheriff to confirm the hearing?*

- The draft rule sets out the procedures for the claimant to have a hearing confirmed and for any related objection by the respondent. A bespoke application form is prescribed for this purpose (Form 22J). The form provides space for the respondent to object to the orders requested if they choose.
- The Committee agreed that no amendments to the draft rule are required. The Committee noted that whilst the SP Review promoted the streamlining of forms, it also acknowledged that there are occasions where a prescribed form will be of particular benefit to court users. This particular form guides the applicant in providing the court with the specific information necessary to assist the sheriff in effectively managing the case at this stage and is to be retained. The Committee invited the Secretariat to consult with LIT to review the content of the Form 22J and to provide a revised draft for members' consideration and approval.

(vi) *Draft rule 22.20 What is a pre-trial meeting?*

- The draft rule sets out that this is a meeting between the parties to discuss settlement of the claim and, if unable to settle to consider which matters are no longer in dispute. It is similar in purpose to existing summary cause procedure for a pre-proof conference (SCR 34.10).
- The Committee noted that the word 'trial' is not used in this or other civil procedure rules and is potentially confusing for court users, especially party litigants. The Committee invited the Secretariat to instruct LPPO to amend the terminology used for consistency with other rules and clarity for court users.
- The Committee noted that the draft rule provides that parties must meet in person or by video-conference and where a party is not legally represented, it must take place in a courtroom and be facilitated by the sheriff to ensure that an unrepresented party is not prejudiced. The Committee reconsidered the draft rules in the context of the policy intention of avoiding any prejudice to an unrepresented party. The Committee noted that the aim of the meeting was to facilitate speedy resolution of the case. Members concluded that the provisions as currently drafted are likely to hinder that aim on a number of levels and would not be an appropriate use of judicial or court time and is likely to be less flexible for unrepresented parties and inhibit free and frank discussions. The Committee agreed that the draft rule will be amended to

provide maximum flexibility for the conduct of meetings with no requirement for these to be held in a courtroom.

(vii) Paragraph 59-60: *Draft rules 22.21 What happens if the parties do not follow the Personal Injury Timetable?*

- The draft rule generally follows existing summary cause procedures. It provides for both mandatory and discretionary discussions in court, dependent on the timetable step which has not been followed.
- The Committee considered there is potential to streamline the procedure with a view to avoiding any unnecessary hearings and to reconsider the content/use of related draft Forms 22K & L. In this regard, the Secretariat and LIT are invited to review the procedural mechanisms and draft forms and to provide proposals for members' consideration and approval. The Committee had in mind in particular, the possibility that a sheriff might consider that no discussion in court was required in the light of an explanation.

(viii) *Draft rule 22.22 How can a party recover documents during a personal injury case?*

- The draft rule signposts the user to Rule 10.6 of the SP rules. The Committee noted that the procedure and application form have been revised under the SP Review. In this respect, the Committee agreed that the draft rule will require to be amended to deleted reference to a "Recovery of Documents Application" and substitution instead of "Additional Orders Application". Drafting instructions will be issued to this effect.

x) *Draft rule 22.23 How can a party ask to vary the Personal Injury Timetable?*

- The draft rule provides a bespoke procedure for varying the PI timetable and includes an application form (Form 22M). The general procedure differs very little from that of the core rules which signpost the user to the new Part 9 form and procedures. The main procedural difference relates to the 7 day timescale in PI cases for lodging an objection to an application to vary the timetable.
- The Committee agreed that bespoke procedural provisions are unnecessary. The rule should instead signpost users to the new Part 9 procedures. A consequential amendment will be necessary to the SP Rules to provide for a 7 day timescale for lodging an objection to an AOA in PI cases. Form 22M will

be omitted. The Committee invited the Secretariat to issue of drafting instructions to give effect to these requirements.

5. Due to the lateness of the hour, the Chair continued consideration of this agenda item to the next meeting on a date to be arranged.

Item 3: AOB

6. There were no additional matters raised.