

**MEETING OF THE SCOTTISH CIVIL JUSTICE COUNCIL
ACCESS TO JUSTICE COMMITTEE
08 FEBRUARY 2023 AT 4.15 PM
VIA CISCO WEBEX**

MINUTES

Present: Lady Carmichael (Chair)
Joel Conn
Employment Judge d’Inverno
Thomas Docherty
Fiona Drysdale
Sheriff Martin-Brown
Dean Purdie
Hazel Thoms

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

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: Gillian Fyfe, Justin Haccius and Chris Fyffe. The Chair advised that Justin Haccius has now been appointed as the Scottish Government standing representative.
2. Members agreed that the following papers would not be published: Papers 3.2, Annex A, 3.3, 4.1, 4.1A & B.

Item 2: Previous Meeting

Item 2.1 – Items by Correspondence (Paper 2.1)

3. Paper 2.1 is a note of matters which have been 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.
4. Two matters have been considered by correspondence:
 - Item 2023/01 was issued on 09 January 2022 and invited members to

to approve the draft minutes of the Committee meeting on 20 December 2022. Responses were invited by close of business on 23 January 2022. No responses were received. The approved minutes were published on the Council website.

- Item 2023/04 was issued on 25 January 2023 and invited members to approve the draft minutes of the meeting held on 16 January 2023. Responses were invited by close of business on 01 February 2023. 1 response was received noting an amendment. The approved minutes were published on the Council website.

Item 3: Justice System Reform

Item 3.1 - Simple Procedure Special Claims: Continued consideration of draft rules in personal injury cases (Papers 4.1, 4.1A & B dated 20 December 2022)

5. The draft special claims rules instrument was approved in principle by Council in May 2017 pending the outcome of the Review of Simple Procedure. The Committee is tasked with reconsidering the draft rules having the benefit of the operational feedback and outputs from the Simple Procedure Review.
6. The Committee continued consideration of the papers which discussed policy queries and proposals for amendments to Part 22 of the draft Special Claims Rules instrument for personal injury claims. The Committee and made the following decisions:

Draft rules 22.24 and 22.25 How can a party ask for the progress of personal injury case to be paused/restarted?
7. The Committee noted that the procedure provided in the draft instrument differs very little from that of the core SP rules which now utilise the new Part 9 Additional Orders Application form and procedures when parties to seek to pause/restart a case.
8. The main procedural difference relates to the 7-day timescale in PI cases for lodging an objection to such an application and the requirement for an applicant to set out the date until which the case should be paused.
9. **The Committee agreed that there was no requirement for a bespoke procedure to regulate the pause/restart of PI cases. The rules should simply sign post the user to the new Part 9 of the SP rules.**
10. **The rules should provide a 7-day timescale for the lodging of objections to Part 9 applications in PI cases. The rule and/or the AOA Application Form is**

to provide a requirement that an application to pause a PI case must set out the date until which the case should be paused.

11. Draft Forms 22N & 22O will be omitted.

Draft rule 22.26 What can the court do with a paused personal injury case?

12. The core SP rules provide that the sheriff clerk must present to the sheriff a case which has been paused for 6 months or more. The rules go on to provide for written orders and for disposal of the case where such orders are not complied with. The procedure under the draft rule 22.26 essentially replicates these provisions for personal injury actions (with the exception of the 6-month proviso mentioned).

13. The Committee noted the potential variance in duration of timescales for paused cases in PI actions and queried if this provision could work effectively in practice. The SCTS Legislation Implementation Team (LIT) have consulted with their IT colleagues and advise there is no operational difficulty with variable pause dates in these actions.

14. The Committee agreed an amendment to the wording of draft rule 22.26(1) will be instructed to improve clarity.

Draft Forms and Standard Orders

15. The Committee agreed that draft forms and standard orders in Paper 4.1B should be reviewed with a view to streamlining where possible and to identify any beneficial amendments.

16. The Committee agreed that the Secretariat and LIT should liaise with LPPO to provide revised draft forms and SOs for members' consideration and approval in due course. The content of the PI Pre-action Protocol will also be reviewed.

17. The Committee asked LIT to ensure that SCTS IT colleagues are sighted on the prospective need for new and amended forms/SOs.

Item 3.2 – ATJC Letter to SCTS – Request for information on service of claims (Paper 3.2, Annex A, 3.3)

18. The Committee noted that SCTS previously lodged a paper out-lining the potential costs impact to SCTS, arising from the service of special claims cases/court documents on behalf of party litigants. SCTS invited the Committee to reconsider the under-pinning policy for service of special claims/ documents by the sheriff clerk.

19. The Committee considered that the paper provided by SCTS lacked vouching and relevant information about the basis upon which the calculations had been made. The Committee wrote to SCTS (**Paper 3.2**) to invite them to provide more information and to speak on the subject at today's meeting.
20. **Paper 3.3** is a letter from SCTS in response to the issues raised. The Chair invited Kirsty Hyslop to provide an overview of the SCTS response and to address any questions from members. The key points discussed are noted below.
21. The statistics on potential costs had proved difficult to determine due to limitations of the SCTS case management system. The Committee noted that SCTS provided financial modelling to the Scottish Government Criminal Justice Committee regarding scrutiny of the government's budget bill. The current SCTS budget is being reviewed by the SCTS Board at the end of March 2023. There is a significant funding gap in the current budget which will increase if the special claim rules are enacted as currently drafted making provision for service of claims/orders by the sheriff clerk.
22. The sheriff clerk previously had a role in service of small claims but not in service of heritable or personal injury actions (which will be the bulk of special claims cases going forward). Though it was noted that the majority of costs incurred are likely to arise in the service of orders rather than initiating service of claims.
23. It was noted that costs implications for service of claims and orders is already ongoing. The Committee discussed prospective alternatives to sheriff clerk service and the risk/benefits to the civil justice system. In particular, whether the special claims rules should depart from making provision for service by sheriff clerk in certain aspects of the procedure.
24. The key policy issue is the requirement for rules to make provision for effective service of claims and orders in those cases involving unrepresented parties. It was acknowledged that provisions for service by the sheriff clerk in court rules, has gradually expanded over time as rules seek to make court procedures more efficient and effective. It was highlighted too that this issue is likely to arise in more Council projects going forward for example the Rules Rewrite Project and is not limited only to PI special claims.
25. The Committee discussed the alternative procedure would be that the responsibility and costs for service of such items would fall to one or both parties. The draft special claims rules would require to be amended if this approach was adopted.

26. The Committee considered that this approach would potentially make the Simple Procedure special claims procedure more complex and costly for individuals and potentially more time consuming and costly for the court. From an Access to Justice perspective, this approach would not align with the policy principles of Simple Procedure which is a court process designed to provide a speedy, inexpensive and informal way to resolve disputes.
27. The Committee acknowledged that there would be cost implications for SCTS going forward due to the procedural aspects which may require the sheriff clerk to serve claims/documents for unrepresented parties. Whilst the Committee noted that there will be a cost impact to these provisions, it agreed that the wider context of whether civil court fees actually cover the system related costs is a policy matter for Scottish Government and is not for the Committee/Council to resolve. The Committee suggested that the matter may best be considered directly by SCTS and SG going forward.
- 28. Having considered all the issues, the Committee declined to depart from the policy intention that certain aspects of the Simple Procedure special claims rules would require service of claims/ documents by the sheriff clerk as provided for in the draft instrument.**
29. SCTS was invited to monitor the operational costs going forward. The Committee noted that accurate data would be needed to inform the position on costs in the context of balancing costs with access to justice considerations.

Item 4: AOB

30. The next meeting is scheduled for April 2023 on a date to be confirmed.