

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

**MINUTES**

**Present:** Lady Carmichael (Chair)  
Joel Conn  
Fiona Drysdale  
Dean Purdie  
Denise Swanson  
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: Employment Judge d’Inverno, Thomas Docherty, Sheriff Martin-Brown, Justin Haccius and Chris Fyffe. Gillian Fyfe was absent.
2. Members agreed that the following private papers would not be published:  
Papers 3.1, 3.1A.

**Item 2: Previous Meeting**

*Item 2.1 – Items by Correspondence (Paper 2.1)*

3. Paper 2.1 noted one matter which had 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.
  - Item 2023/05 was issued on 27 February 2023 and invited members to approve the draft minutes of the Committee meeting on 08 February 2023. Responses were invited by close of business on 06 March 2023. No responses were received. The minutes were approved and published on the Council website.

### **Item 3: Justice System Reform**

#### *Item 3.1 - Simple Procedure Special Claims: Part 23 Multiplepoinding (Papers 3.1, 3.1A, 3.1B)*

4. 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 now reconsidering the draft instrument having the benefit of the operational feedback and outputs from the Simple Procedure Review.
5. The Chair provided a brief overview of the purpose and potential outcomes of MP actions. The Committee considered the papers containing policy queries and proposals for amendments to part 23 of the draft instrument relating to multiplepoinding (MP) claims. The Committee made the following decisions:

*Draft rule 23.1 - What is this part about?*

*Draft rule 23.2 - What is a multiplepoinding claim?*

*Draft rule 23.3 - Who may make a multiplepoinding claim?*

6. Members agreed that no amendments to draft rules 23.1 to 23.3 are required.

*Draft rule 23.4 - How is a multiplepoinding claim made?*

7. Having checked all cross-references, members agreed that no amendments to the draft rule are required. The draft MP claim form 23A will require streamlining. The Committee agreed that the Secretariat should consult with SCTS' Legislation Implementation Team (LIT) and the Lord President's Private Office (LPPO) with a view to providing a revised form for members' consideration.

*Draft rule 23.5 How do you complete the Multiplepoinding Claim Form?*

8. The Committee noted that the draft rule aligns with similar provisions in the core simple procedure rules and incorporates requirements specific to MP claims. In order to align this rule with the recent procedural changes made to the core rules, members approved the deletion of those provisions relating to lists of evidence and witnesses. In addition, members invited LPPO to reconsider the drafting of sub paragraph (d) with a view to improving clarity. The wording "*complete description of the subject matter of the claim*" was offered for consideration.

*Draft rule 23.6 How do you respond to a multiplepoinding claim?*

9. The Committee noted that current summary cause procedure requires the sheriff clerk to intimate a copy of any response lodged to the pursuer (rule 27.6(2)). The

draft rule provides that the respondent must lodge their response with the court by the last date for response and at the same time, send a copy of their response form to the claimant. This aligns MP cases with the procedure of the core rules (SP Rule 4.2.(2)(a)).

10. The Committee confirmed that the policy intention for this provision is that the sheriff clerk will not be involved in intimating the response form to the pursuer. This ensures that a consistent approach is taken throughout the rules.

11. The Committee noted that the MP Response Form (Form 23B) sets out the response options pertinent to this case type and may require streamlining in a similar manner to other forms. The Committee agreed that the Secretariat should consult with LIT/LPPO with a view to providing a revised form for members' consideration.

*Draft rule 23.7 What responses can you make?*

12. The Committee noted that the draft rule provides four response options which are pertinent to this case type. It has been aligned in so far as possible with the core rule and as required, makes additional bespoke provision particular to MP claims. Members considered the draft rule and agreed that no drafting amendments were required.

*Draft rule 23.8 What has to go in a Multiplepointing Response Form?*

13. The Committee noted that the draft rule generally aligns with similar provision in the core rules and incorporates additional requirements, specific to MP claims. As noted at draft rule 23.5, those provisions relating to lists of evidence and witnesses should be deleted as unnecessary.

14. The draft rule provides that the respondent must indicate in the MP Response Form if they think there should be any additional respondents. The Committee has previously agreed on the utility of signposting the user to SP Rule 7.5 which regulates the relevant procedure. The Committee agreed to instruct an amendment to this effect in order to align the procedures throughout each part of the rules and to prevent unnecessary duplication.

*Draft rule 23.9 - What will be the first written orders?*

15. The Committee noted that the draft rule is aligned with the procedure in the core rules with one additional provision specific to MP cases, i.e. the option to consign the subject matter of the claim with the sheriff clerk. This is the only bespoke provision.

16. The Committee agreed that the draft rule should be revised to sign-post the user to SP Rule 7.6 and to include this single bespoke provision about consignment. In this regard, the draft rule will be more concise and user friendly.

*Draft rule 23.10 - When can the sheriff order advertisement of a multiplepointing claim?*

17. The Committee noted that the draft rule provides discretion to the sheriff to order advertisement or service of a claim to a person who may have an interest in the subject matter of the claim. Members agreed to instruct a minor drafting amendment to incorporate the words “at any stage”. The revision will align the new rule with the wording of current summary cause rule 27.11.

*Draft rule 23.11 - When can the sheriff order consignment of the subject matter of the claim?*

18. The Committee noted that the draft rule explains the purpose of consignment and the sheriff's discretion to order consignment with the sheriff clerk. It makes provision for the person who was in possession of the subject matter of the claim to apply for their discharge or for a party to seek an order for consignment of the subject matter of the claim. The draft provisions specify the procedure is by way of an *Incidental Orders Application*.

19. The Committee noted that ‘*Incidental Orders*’ have now been replaced by a new procedure and *Additional Orders Application* (Form 9A) in Part 9 of the SP rules. Members agreed that the draft rule should be revised to reference the new application form and procedure and that drafting instructions will be issued to this effect.

20. The Committee considered clarifying the draft rule to provide that the sheriff may allow the holder of the fund, their expenses as a first charge on the fund. Members agreed in principle to the need to clarify the mechanism for timeous payment of expenses to a fund holder and that provision along a similar line to current summary cause rule 27.12(3) should be considered. This revision aims to ensure that the provisions facilitate timeous payment of expenses to the fund holder otherwise they may obtain an award of expenses which they would be unable to enforce until the case is concluded.

21. The Committee noted that the expenses rules in Chapter 14.3 do not appear to encompass this type of award and invited LPPO to consider whether additional provision in this regard may be beneficial. In addition, LPPO is invited to consider the placement of the definition of ‘consignment’.

*Draft rule 23.12 - What sort of decisions can the sheriff make?*

22. The Committee noted that the draft rule requires a party to provide the court with a tax certificate prior to a decision being made in a case. The rule goes on to confirm the sheriff's full discretion to make any decision which resolves the dispute (and notes particular decisions which could be made in such cases).
23. Members considered the draft rule and agreed in principle to the provisions as drafted. However, members queried if the tax certificate referred to in the draft provision is a statutory requirement under the Sheriff Court Consignation (S) Act 1893. LPPO will be invited to consider whether there is any requirement to clarify the meaning of "tax certificate" in similar manner to OCR 30.2 and if so, whether it may be best included in interpretation rather than the body of the rules.

*Draft Forms and Standard Orders*

24. The Committee agreed that all draft forms and standard orders should be reviewed with a view to streamlining where possible and to identify any beneficial amendments.
25. 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 Committee asked LIT to ensure that SCTS IT colleagues are sighted on the prospective need for new and amended forms/SOs.

**Item 4:        AOB**

26. No other business was tabled. The next meeting is scheduled for August 2023 on a date to be confirmed.