

**MEETING OF THE SCOTTISH CIVIL JUSTICE COUNCIL ACCESS TO JUSTICE
COMMITTEE**

MONDAY 12 JUNE 2017 AT 3PM

JUDGES DINING ROOM, PARLIAMENT HOUSE, EDINBURGH

MINUTES

- Members present:**
- Lady Wise (Chair)
 - Anne Dickson (Scottish Legal Aid Board)
 - Sheriff Principal Turnbull
 - Employment Judge Joseph d’Inverno (SCJC member)
 - Ruth Crawford QC (Advocate)
 - Paul Reid (Solicitor, SCJC member)
 - Dean Purdie (Solicitor)
 - Ian Maxwell (Families Need Fathers, SCJC member)
 - Rachel Smith (Gordon Rural Action)
 - Jane Williams (Queen Margaret University, SCJC member)
 - Andrew Alexander (Law Society of Scotland) (For part of Item 4.1 only)
- In attendance:**
- Senga Gracie (Legislation Implementation Team, SCTS)
 - Mark Kubeczka (Legislation Implementation Team, SCTS)
 - Diane Machin (Deputy Principal Clerk of Session)
 - Yvonne Anderson (Offices of Court of Session)

Support: Julie Davidson (Deputy Legal Secretary, LPPO)
Andrew Campbell (Deputy Legal Secretary, LPPO)
Lauren Gibb (SCJC Secretariat)

Apologies: Lord Arthurson
Professor Frances Wasoff
Denise Swanson (Scottish Government)

Item 1: Welcome, apologies and agreement of private papers

1. The Chair welcomed those present and welcomed Julie Davidson, Mark Kubezka and Diane Machin to their first meetings.
2. Apologies were noted from Lord Arthurson, Professor Frances Wasoff and Denise Swanson.
3. **The Committee agreed not to publish the following papers: 2.2, 4.1 4.1A, 4.2, 4.2A, 4.2C, 4.2D, 4.3, 4.3A, 4.3C**

Item 2: Previous meeting

Item 2.1 – Minutes of previous meeting (Paper 2.1)

4. The Chair asked the Committee to note that a small typographical error in paragraph 12 of the draft minutes has been corrected.
5. **The Committee approved the minutes of the previous meeting.**

Item 2.2 – Progress of actions from previous meetings (Paper 2.2)

6. **The Committee noted the progress that has been made on actions since the last meeting.**

Item 3: Work Programme

Item 3.1 - Update from the Scottish Government on legislative developments (Oral)

7. The Chair advised that whilst Denise Swanson has tendered apologies for this meeting, she has provided a note to update the Committee about the Civil Litigation (Expenses and Group Proceedings) (Scotland) Bill (known as ‘the Taylor Bill’), which was recently introduced.
8. The Committee noted that the Scottish Government intends for the Taylor Bill to increase access to justice by creating a more accessible, affordable and equitable civil justice system. The Scottish Government aims to make the cost of court actions more predictable, for example by increasing the funding options available to pursuers.
9. The Chair noted that the Bill introduces sliding caps for success fee agreements in personal injury and other civil actions. It makes provision for the *auditor of the Court of Session*, the *auditor of the Sheriff Appeal Court* and *sheriff court auditors* to become salaried posts within the Scottish Courts and Tribunal Service. It is anticipated that a further update on the Bill will be provided at the next meeting.

Item 3.2 - Update from the Rules Rewrite Drafting Team (Oral)

10. Julie Davidson provided an update on the work of the Rules Rewrite Drafting Team (“RRDT”). She advised that *The New Civil Procedure Rules Report – First Report*, which sets out how the Rules Rewrite Project will progress, was published on the SCJC website in May. It is anticipated that phase two of the project will comprise of six workstreams, one of which would be *access to justice*.
11. It is anticipated that the workstreams will be considered by either a SCJC committee or a working group and that the *access to justice* workstream will be considered by this committee. The RRDT intends to meet with the committees and working groups for workstreams one to four throughout the rest of 2017.
12. The RRDT will be raising awareness of the project through presentations in each sheriffdom in a series of summer tours. Further details of the tours will be published on the Council’s website in due course.
13. **The Committee noted this update.**

Item 4: Research and Consultations

Item 4.1 – Review of Lay Representation and Lay Support (Papers 4.1-4.1A)

14. The Committee noted that Andrew Alexander, Head of Policy at the Law Society of Scotland (‘the Society’), has kindly agreed to attend this meeting to assist the Committee with its ongoing review of lay representation and lay support. The Chair invited Mr Alexander to explain the Society’s views on the regulation of

those without legal qualifications who wish to act as lay representatives.

15. Mr Alexander advised that the Society's general view is that access to justice should be promoted, human rights should be protected and mechanisms should exist to resolve disputes effectively. He advised that the Society has concerns about whether current primary legislation, such as the Solicitors (Scotland) Act 1988, can adequately protect the public from unregulated legal services. He advised that the Society believes clarity is required regarding unregulated legal service providers, which are estimated to make up around 20%-30% of the legal market. He advised that many of these businesses appear to provide legal services but are not staffed by legally qualified practitioners. This poses a risk for consumer protection.
16. Mr Alexander advised that the Society welcomed the Council's recent rule providing that a lay representative can make an application to represent a party if it would be in the interests of justice. If the application is granted, the lay representative may then represent a party in full. Mr Alexander advised that the Society remains concerned about the unregulated legal market and in particular about paid legal representatives.
17. The Committee considered various options set out in **Papers 4.1 and 4.1A**, about lay representation and lay support and considered what specific issues it will take forward under the review.
18. **The Committee agreed to make the following recommendations to Council:**
 - **Where practicable, the definition of lay representation in court rules should be unitary.**
 - **Court rules should provide prescribed forms of application for a lay representative and that an application can be made at any time at the bar, provided that prescribed information about the lay representative can be provided to the court at the time of application. The Committee did not discuss what this prescribed information might contain.**
 - **An individual cannot be legally represented and have lay representation at the same time; rules should expressly provide that when an individual becomes legally represented, any lay representative appointment ends.**
19. The Committee had an in depth discussion about the issues of remuneration and expenses for lay representatives. It noted that in relation to expenses, lay

representation appears to fall between two stones; namely, if a party represents themselves and is successful, they are entitled to some expenses and if a party is represented by a solicitor who is successful, they are entitled to full expenses.

20. The Committee discussed the potential issues with remunerating lay representatives and acknowledged that some lay representatives, for example family members, friends or those who work for advice agencies and are paid through contracts of employment, do not require or expect remuneration.
21. **The Committee agreed that it would recommend that the prohibition on lay representatives receiving payment remain in place. The Committee also agreed that further clarity is required about lay representatives being permitted to claim for “reasonable outlays”.**
22. **Due to the lateness of the hour, the Committee continued this item for further discussion and asked the Secretariat to arrange an additional meeting.**

Item 4.2 - Public Interest Interventions (Papers 4.2 – 4.2A-D)

23. **Papers 4.2 and 4.2A-D** invited members to consider the subject of Public Interest Interventions. The Committee noted it first considered this subject on 17 October 2016.
24. **Due to the lateness of the hour, the Committee postponed consideration of this matter until the next appropriate meeting.**

Item 4.3 - Improving Scotland’s Attractiveness for Commercial Dispute Resolution (Papers 4.3 - 4.3A-E)

25. A discussion paper entitled ‘*Improving Scotland’s Attractiveness as a Forum for Commercial Dispute Resolution*’ was previously presented to the Council by Brandon Malone. The subject matter relates to alternative dispute resolution and the Council remitted the matter to this Committee to consider.
26. **Due to the lateness of the hour, the Committee postponed consideration of this item until the next appropriate meeting.**

Item 5 - A.O.C.B

27. There was no other business raised.

Item 6 - Date of next meeting

28. The Committee noted the next scheduled meeting date:

- Monday 9 October 2017 at 3pm in Parliament House, Edinburgh

29. An additional summer meeting date will be confirmed by the Secretariat.

**Scottish Civil Justice Council Secretariat
June 2017**