

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

TUESDAY 18 APRIL 2017 AT 2PM

JUDGES CONFERENCE ROOM, PARLIAMENT HOUSE, EDINBURGH

MINUTES

Members present: Sheriff Arthurson (Chair)

Anne Dickson (Scottish Legal Aid Board)

Denise Swanson (Scottish Government)

Sheriff Principal Turnbull

Sheriff Mackie (Personal Injury Committee) (for items 4.1 and 4.2 only)

Employment Judge Joseph d’Inverno (SCJC member)

Amber Galbraith (Advocate, Personal Injury Committee) (for items 4.1 and 4.2 only)

Paul Reid (Solicitor, SCJC member)

Dean Purdie (Solicitor)

Fraser Simpson (Solicitor, Personal Injury Committee) (for items 4.1 and 4.2 only)

Ian Maxwell (Families Need Fathers, SCJC member)

Rachel Smith (Gordon Rural Action)

Jane Williams (Queen Margaret University, SCJC member)

Professor Frances Wasoff (Edinburgh University)

Alan Rogerson (Personal Injury Committee) (for items 4.1 and 4.2 only)

In attendance: Senga Gracie (Legislation Implementation Team, SCTS)

Support: Norman Munro (Deputy Legal Secretary, LPPO)

Andrew Campbell (Deputy Legal Secretary, LPPO)

Lauren Gibb (SCJC Secretariat)

Apologies: Lady Wise

Yvonne Anderson (Offices of Court of Session)

Ruth Crawford QC (Advocate)

Item 1: Welcome, apologies and agreement of private papers

1. The Chairman welcomed those present and welcomed Anne Dickson and Rachel Smith to their first meetings. The Chairman advised that Catherine Molloy's tenure has come to an end and that Lady Wise has written to Ms Molloy thanking her for her valuable contribution to the Committee.
2. The Chairman introduced Sheriff Mackie, Amber Galbraith, Alan Rogerson and Fraser Simpson from the Personal Injury Committee and noted that they were attending today principally to contribute to the discussions on agenda item 4.1.
3. Apologies were noted from Lady Wise, Yvonne Anderson and Ruth Crawford QC.
4. **The Committee agreed not to publish the following papers: 2.2, 4.1, 4.1A-D, 4.2, 4.2A, 4.3, 4.3A-C, 5.1, 5.1A-D, 5.2, 5.2A-C, 5.3.**

Item 2: Previous meeting

Item 2.1 – Minutes of previous meeting (Paper 2.1)

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. Denise Swanson updated the Committee about recent legislative developments. She advised that the Limitation (Childhood Abuse) (Scotland) Bill is progressing through Parliament and that the Justice Committee of Parliament has completed its Stage 1 consideration of the Bill. She advised that the Scottish Government is committed to introducing a Bill which is provisionally titled the 'Expenses and Funding on Civil Litigation (Scotland) Bill' within this Parliamentary year and that this Bill delivers on the recommendations of Sheriff Taylor's Review of Expenses and Funding of Civil Litigation in Scotland. Finally, she advised the Committee that the Making Justice Work Programme Board intends to reconsider the commencement date for the Simple Procedure (Special Claims) Rules. The Board will take account of the Council's comments on commencement made at its meeting on 20 March 2017.

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

8. Norman Munro provided an update on the work of the Rules Rewrite Drafting Team (RRDT). He advised that phase one of the Rules Rewrite Project Plan is complete and that a report summarising the decisions made to date will be considered by Council in due course and published when approved. He also advised that RRDT is moving onto the second stage of the project, which is the preparation of a procedural narrative.
9. Norman also advised that the Council will shortly be invited to consider a proposal that cross-Council working groups be set up to progress the workstreams under phase two of the project plan. It is envisaged that the working groups will be made up of Council and Committee members and others with specialist expertise.

Item 4: Justice System Reform

Item 4.1 - Simple Procedure (Special Claims) (Papers 4.1-4.1D)

10. The Committee considered Papers 4.1 and 4.1A-D which invited the Committee to consider a draft instrument relating to the Simple Procedure (Special Claims) rules. The Committee noted that the instrument had been revised since the two small consultation exercises were held in January with stakeholders in the fields of personal injury and housing law.
11. The Committee noted the contents of Paper 4.1, in which it was stated that it was now likely that there will be a delay in the commencement of the special claims rules which were previously scheduled to commence in September 2017. The

Committee noted that this relates to ongoing development work on the Integrated Case Management System (ICMS) and the likely late 2017 commencement of section 16 of the Housing (Scotland) Act 2014. The 2014 Act transfers the functions and jurisdiction of the sheriff in relation to certain private rented housing actions to the First-tier Tribunal and the Committee noted that commencing the special claims rules on the date previously planned would, for a period of time, require practitioners to work with three sets of rules in relation to housing claims. The Committee noted that a formal decision on commencement of the rules would be taken in due course by the Making Justice Work Programme Board.

12. The Committee discussed the draft rule relating to the pre-trial meeting in personal injury claims. The Committee noted that the personal injury committee, who developed the personal injury rules, had previously agreed that the rules should make provision that parties require to attend a pre-trial meeting in court facilitated by the sheriff, instead of placing a presumption in favour of dispensing with the pre-trial meeting for party litigants. The Committee discussed whether the courtroom is an appropriate setting for a pre-trial meeting and whether it might be better to dispense with the requirement altogether when a party is representing themselves.
13. **The Committee agreed that the pre-trial meeting is an important feature in personal injury proceedings and that the rules should provide for this in the format previously agreed by the Personal Injury Committee.**
14. **The Committee agreed that the procedure relating to the pre-trial meeting should be reviewed as part of the special claims rules review in due course.**
15. **The Committee approved the personal injury special claim rules developed by the Personal Injury Committee.**
16. **The Committee considered the draft instrument alongside the legal advice provided and approved the following:**
 - a) **An “eviction claim” will be defined in the rules as “an action for the recovery of possession of heritable property”.**
 - b) **A paragraph will be inserted into the rules on completing the Eviction Claim Form providing that the claimant must send the court a copy of any statutory notice that has been issued to the respondent.**
 - c) **The proposal to omit the sections on witnesses and documents from the Eviction Claim Form and Eviction Response Form.**

- d) The rules will make provision for an “Eviction Case Timetable” which will set out the date for the “eviction case discussion”.**
- e) The proposed rule making provision that if the identity of a respondent is unknown in an eviction claim, a Sheriff Officer must serve the Eviction Claim Form and that the method of personal service required will depend on the type of property that is in dispute.**
- f) The rules will not prescribe that a respondent “must” complete an Eviction Response Form and a claimant will not be required to serve a blank Eviction Response Form on a respondent.**
- g) The rules will clarify that an “eviction case discussion” must take place before a decision can be made in an eviction claim (except a decision to dismiss the case).**
- h) The rules will prescribe an “Eviction Decision Form” which takes into account the specialist eviction enforcement rules and also reflects that in many eviction claims the sheriff will specify a shortened period for enforcement.**
- i) The proposed rule allowing a party to apply for recall of a decision in an eviction claim, including the proposal to allow one mandatory recall of a decision in an eviction case.**
- j) The rules will include a provision that a claimant may only enforce an order for eviction by instructing a sheriff officer and using the powers of enforcement prescribed in the Act of Sederunt (Actions for removing from heritable property) 2012.**
- k) The multiplepointing rules will refer to the fund or subject in medio as “the subject matter of the claim”.**
- l) The proposed rule making provision for consignment of the subject matter of the claim with the sheriff clerk in a multiplepointing claim**
- m) The proposed rule making provision that a party must send the court a tax certificate before a decision can be made in a multiplepointing claim in which the subject matter is consigned to the court.**
- n) The proposed rules making provision for aliment claims.**
- o) The proposed rule prescribing a bespoke Aliment Claim Form.**

p) The proposal to amend the existing Change of Timetable Application, Time to Pay Notice, List of Evidence and List of Witnesses in the core simple procedure rules to ensure that all references contained within these existing forms remain accurate when the special claims chapters come into force.

17. The Committee approved the draft instrument for consideration by the Council, subject to any stylistic or typographical amendment.

18. The Chairman thanked the members of the Personal Injury Committee for their valuable contribution to the discussion.

Item 4.2 - Simple Procedure (Special Claims) – Fees instrument (Papers 4.2 – 4.2A)

19. The Committee considered Papers 4.2 and 4.2A which invited the Committee's comments on a draft instrument making provision for the fees of solicitors in the sheriff court in relation to Simple Procedure (Special Claims) cases. As the members of the Personal Injury Committee had also previously considered a draft of this instrument at their meeting in March, these members also contributed to this discussion.

20. The Committee noted that this instrument will form part of the implementation programme for the second stage of Simple Procedure and it is intended that it will come into force on the same day as the special claims rules. The Committee also noted that the purpose of the instrument is to make provision for the fees for personal injury claims in Simple Procedure. As such, the basis for the table of fees is Part IIIB of the current summary cause table of fees, with procedure, terminology and style updated to align with the ethos of Simple Procedure.

21. The Committee noted the contents of the instrument provided at Paper 4.2A.

Item 4.3 – Simple Procedure Amending Instrument (Paper 4.3 – 4.3C)

22. The Committee considered Papers 4.3 and 4.3A-C which contains a draft instrument making amendments to the core Simple Procedure rules.

23. The Committee noted that since commencement of the Simple Procedure rules, the Secretariat has been in regular contact with SCTS officials to identify any proposed improvements to the rules. The Committee noted that the Secretariat has also received feedback about the rules from other sources, such as the Delegated Powers and Law Reform Committee of the Scottish Parliament, the Society of Messengers at Arms and Sheriff Officers and Citizens Advice Scotland.

24. Having considered this feedback, the RRDT took the view that there is merit to making some of the requested amendments and, accordingly, has prepared the draft instrument at Paper 4.3A.
25. The Committee noted that the instrument makes a number of changes to the simple procedure rules; it clarifies that only an individual can make a Time to Pay Application in line with primary legislation, provides that a party may only make one application for a recall in the same case and it amends rule 15.3 to cross-refer to the existing form of charge set out in Act of Sederunt (Form of charge for payment) 1988.
- 26. The Committee approved the draft instrument for consideration by the Council, subject to any stylistic or typographical amendment.**

Item 5 – Research and Consultations

Item 5.1 - Lay representation and lay support (Papers 5.1 – 5.1D)

27. The Committee considered Papers 5.1 and 5.1A-D which contained draft rules to implement the Committee's policy decisions on lay representation made in October. It was noted that the Committee recommended the provision of a rule that did not permit lay representatives to cross examine a witness as an automatic right. The rules would make provision instead to permit a lay representative to make an application to cross-examine a witness if it would be in the interests of justice for the lay representative to do so
28. The Committee noted that in December the Committee had agreed that the draft rules should make clear that the withdrawal of permission for a lay representative to represent a party should not preclude any other lay representative applying for permission to represent that party. The Committee reconsidered this policy decision alongside Papers 5.1 – 5.1A-D and agreed that the rules do not require to make provision in these terms as this was implied. Accordingly the Committee instructed the drafter to revise the draft rules to this effect and agreed the draft be circulated to the Committee for consideration by correspondence.
- 29. The Committee approved revisions to the draft rules in relation to lay representation and instructed a revised draft to be circulated by correspondence in due course.**

Item 5.2 - EU Small Claims (Papers 5.2 – 5.2C)

30. The Committee considered Paper 5.2 and Papers 5.2A-C which invited the Committee to consider and approve draft rules, required as a consequence of a new EU Regulation (Regulation (EU) 2015/2421) ('the 2015 regulation').

31. The Committee previously considered this matter at its meeting in December 2016 and instructed the preparation of draft rules to implement the 2015 Regulation.

32. The Committee approved the draft instrument for consideration by the Council, subject to any stylistic or typographical amendment.

Item 5.3 - Competence at Signet (Paper 5.3)

33. The Committee considered Paper 5.3 which invited the Committee to consider recommendation 131 of the Scottish Civil Courts Review (SCCR) on the subject of checking competence at signet and to provide recommendations to the RRC.

34. The RRC considered a discussion paper on case management powers under phase 1 of the Rules Rewrite Project Plan at its meeting in October 2016. The discussion paper notes that the SCCR made a number of case management recommendations about party litigants. In particular, recommendation 131 provided that *'the sheriff clerk should be given discretion to refer any ordinary action or summary application presented by a party litigant to a sheriff who may direct whether or not the action should be allowed to proceed. That decision should be based on whether or not, in the sheriff's opinion, the writ discloses a stateable case. The decision of the sheriff should be final and not subject to review.'* The RRC remitted consideration of this recommendation to this Committee and to provide its views and any recommendations.

35. The Committee discussed SCCR recommendation 131 and noted that although there are currently no rules relating to consideration of competence at signet, under local practice, a Sheriff Clerk Depute may on occasion refer a writ or application to the sheriff to review.

36. The Committee noted the contents of Paper 5.3 and agreed to feed back to the RRC that care should be taken to ensure that any rule change in this regard does not impede access to justice for party litigants in the Sheriff Court.

Item 6 - A.O.C.B

37. There was no other business raised.

Item 7 - Dates of future meetings

38. The Committee noted the date of the next meeting as:

- Monday 12 June 2017 at 3pm in Parliament House, Edinburgh.

Scottish Civil Justice Council Secretariat
April 2017