

**MEETING OF THE SCOTTISH CIVIL JUSTICE COUNCIL  
ACCESS TO JUSTICE COMMITTEE  
MONDAY 1 FEBRUARY 2016 AT 3 PM  
JUDGES DINING ROOM, PARLIAMENT HOUSE**

**MINUTES**

**Members present:** Sheriff Arthurson (Chair)  
Ruth Crawford QC (Advocate)  
Paul Reid (Solicitor, SCJC member)  
Prof. Frances Wasoff (Edinburgh University, SCJC member)  
Ian Maxwell (Families Need Fathers, SCJC member)  
Denise Swanson (Scottish Government)  
Colin Lancaster (Scottish Legal Aid Board)

**In attendance:** Yvonne Anderson (Depute in Charge of Offices of Court)

**Support:** Luke McBratney (Deputy Legal Secretary, RRDT)  
Neil Deacon (Deputy Legal Secretary, LPPO)  
Bridget Lee (SCJC Secretariat)

**Apologies:** Lady Wise  
Employment Judge Joseph d'Inverno (SCJC member)  
Catherine Molloy (Solicitor)  
Lauren Bruce (Consumer Representative, SCJC member)  
Nicola Anderson (Policy and Legislation Branch, SCTS)

**Item 1: Introduction, welcome, apologies and private papers**

1. Sheriff Arthurson was in the Chair as Lady Wise was unable to attend. The Chair welcomed those present and noted apologies. The Chair went on to say that this was the first meeting for some time which would not be focused on simple procedure and that the main topics would be lay representation and pre-action protocols. The Chair thanked Professor Wasoff for facilitating the simple procedure readability exercise and focus group, which had taken place the previous week.
2. The Chair informed the Committee that Ken Forrest and Ronnie Conway had resigned from the Committee and that Council Members had noted their thanks for the contribution they had made to the work of the Committee, at the Council meeting on 16 November 2015.
3. **The Committee agreed not to publish Papers 2.2, 2.3, 6.1, 6.1B, 6.1D-G, 6.2, 6.2A, 7.1, 7.1A&B.**

## **Item 2: Previous meeting**

### *Item 2.1 – Minutes of previous meeting (Paper 2.1)*

4. **The Committee agreed the minutes from the previous meeting.**

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

5. **The Committee noted the progress of actions since the last meeting.**

### *Item 2.3 – Items by correspondence (Paper 2.3)*

6. **The Committee noted Paper 2.3** which stated that one item, *Simple Procedure – Readability Exercise and Focus Group*, had been considered by correspondence since the last meeting.

## **Item 3: Proceedings**

### *Item 3.1 – New SCJC Update by email (Oral)*

7. Bridget Lee informed the Committee that with the introduction of the SCJC Update, which will be issued by email every two months, there was no longer a need for there to be an update at meetings on the activity of the Council and its Committees.

## **Item 4: Forward Work Planner**

### *Item 4.1 – Update from the Scottish Government on legislative developments (Oral)*

8. Denise Swanson provided an update on legislative developments in the Scottish Government. The Fatal Accident Inquiries Bill has been passed. The Courts Reform (Scotland) Act 2014 implementation is mostly complete. There is a team working on a bill for implementing the recommendations of the Taylor Report that require primary legislation. There is work ongoing on the Auditor of Court points in the Gill Review and the proposals for multi-party actions.

### *Item 4.2 - Update from the Scottish Legal Aid Board on in-court advice projects developed under Making Justice Work Project 3 and ADR research project (Oral)*

9. Colin Lancaster provided an oral update. The in-court advice projects are ongoing and funding has been secured to September 2016. SLAB are liaising with the Scottish Government and the Money Advice Service about future funding. The fieldwork for the ADR research project has concluded and the report is being finalised. The Committee will be updated on the findings at a future meeting.

### *Item 4.3 - Rules Rewrite Update (Oral)*

10. Luke McBratney provided an update on the work of the Rules Rewrite team since the last meeting. The Rules Rewrite Committee has considered a paper proposing a plan for the comprehensive rules rewrite. Some aspects of the rewrite will be the responsibility of individual committees. For example, the rewrite

of lay representation and lay support rules would lie with this Committee. The Court of Session has also recently assumed responsibility for Fatal Accident Inquiry rules, which the Council is to begin preparing shortly.

11. Ian Maxwell proposed that the Committee might wish to suggest topics for the future work of Access to Justice for consideration at the Council Strategy Meeting. **It was agreed that any such suggestions could be emailed to the Secretariat for forwarding on to Lady Wise.**

## **Item 5: Simple Procedure**

### *Item 5.1 – Update on consultation exercise and drafting plans (Oral)*

12. Luke McBratney provided an update on the simple procedure consultation exercise and drafting plans. The consultation period, which closes on 2 March 2016, is halfway through and there have been two responses so far. Institutional responses are expected towards the end of the consultation period. The previous week a readability exercise and a focus group had taken place. The readability exercise involved participants with no experience of court rules being given exercises where they were asked to identify information using the rules, followed by a facilitated discussion about their experience. The focus group involved a group of in-court advisors participating in a facilitated discussion around the questions in the consultation paper. The feedback from both events was constructive and generally positive.
13. The drafters are working on the remaining simple procedure rules. Many of these are tightly prescribed by primary legislation, for example rules on interim diligence and time to pay orders. Discussions are ongoing with the SCTS about what is required in the rules for putting the procedure online.

## **Item 6: Lay Representation**

### *Item 6.1: Proposals for a review of lay representation (Papers 6.1 & 6.1A-G)*

14. The Committee considered **Papers 6.1** and **6.1A-G**. Paper 6.1 summarised the suggestions about lay representation, and the related topic of lay support, that had been received by the Committee and proposed a way forward for reviewing this area. It was noted that there is a lack of consistency in what the terms lay representation and lay support are used to refer to and that it would be helpful to have clear definitions. It was thought that it would be helpful if there was clear guidance on lay representation and lay support for party litigants, court staff and lawyers. Guidance for the general public might be useful on the SCTS website which provides helpful guidance on other matters. One source of guidance is practice notes issued by the sheriffs principal in their sheriffdoms, which is primarily for lawyers. There is also guidance issued by charities including Citizens Advice Scotland and Families Need Fathers. It was noted that guidance could raise awareness of lay representation and lay support. It could also

contribute to consistency of practice across courts. A review of the current guidance could identify gaps and inconsistencies.

**15. The Committee agreed to commence the work of reviewing lay representation and lay support by reviewing any current guidance provided for judiciary, practitioners, court staff and party litigants. The Secretariat was asked to prepare a paper setting out the current guidance, and the LPPO was asked to prepare a paper setting out the current rules, relating to lay representation and lay support.**

16. It was suggested that further areas for review could include: aligning the procedures for lay representation and lay support in the sheriff court and the Court of Session; payment for lay representatives; and, conflict of interest for lay representatives.

*Item 6.2 - Lay representation for non-natural persons (Papers 6.2 & 6.2A)*

17. The Committee considered papers 6.2 and 6.2A and agreed that the LPPO prepare a draft instrument to facilitate implementation of Section 96 & 97 of the Courts Reform (Scotland) Act 2014, which provides for lay representation for non-natural persons in both simple procedure cases and other civil proceedings. The draft rules to be placed before the Committee for consideration in due course.

**Item 7: Personal Injury Compulsory Pre-Action Protocol**

*Item 7.1 - Compulsory pre-action protocols – Application to party litigants (Papers 7.1 & 7.1A-B)*

18. The Committee considered papers 7.1 and 7.1A-B. Paper 7.1A was a paper by the Personal Injury Committee (PIC) seeking the view of this Committee as to whether the proposed compulsory Personal Injury Pre-Action Protocol for general personal injury proceedings, and the separate one for clinical negligence proceedings, should apply to party litigants.

19. The Committee agreed to send a response to PIC setting out that:

- they supported the substance of the proposal to make the protocols compulsory for party litigants as a mechanism to ensure that only those cases that cannot be resolved between parties are lodged in court;
- it was thought that the protocol as currently drafted might be difficult for party litigants to understand and hard for them to navigate. It therefore might present a barrier to unrepresented litigants bringing claims if made compulsory;
- they were concerned about the consequences for party litigants if they did not comply with the protocol, if made compulsory; and,

- a protocol drafted to be accessible to party litigants might assist them in bringing a claim.

And seeking information about:

- the numbers of party litigants who bring these claims and to whom a compulsory protocol would therefore apply;
- how party litigants would be informed that there was a compulsory protocol and whether the onus would be on the other party to tell them; and,
- how party litigants would access information about what sum would be appropriate to claim.

**20. It was agreed that the Secretariat would draft a response to PIC and send it to the Committee as an item by correspondence for comments.**

#### **Item 8: Future Business**

*Item 8.1: Date of next meeting*

**21. The Committee noted that the next meeting would be on Monday 11<sup>th</sup> April 2016.**

#### **Item 9: A.O.C.B.**

**22. Colin Lancaster raised a matter concerning lay representation in housing matters under the simple procedure rules.**

**Scottish Civil Justice Council Secretariat  
April 2016**