

**MEETING OF THE SCOTTISH CIVIL JUSTICE COUNCIL
ACCESS TO JUSTICE COMMITTEE
MONDAY 29 APRIL 2019 AT 1.30 PM
JUDGES DINING ROOM, PARLIAMENT HOUSE**

MINUTES

Members Present: Lady Wise (Chair)

Lord Arthurson

Joel Conn (Solicitor, SCJC member)

Ruth Crawford QC (Advocate)

Employment Judge Joseph d'Inverno (SCJC member)

Summary Sheriff Jillian Martin-Brown

Ian Maxwell (Families Need Fathers, SCJC member)

Dean Purdie (Solicitor)

Rachel Smith (Gordon Rural Action)

Jane Williams (Queen Margaret University, SCJC member)

In attendance: Mark Kubeczka (Legislation Implementation Team, SCTS)

Christina Bardsley (Offices of Court of Session, SCTS)

Support: Andrea Campbell (Secretariat Business Manager, Scottish Civil Justice Council)

Katherine Marshall (Deputy Legal Secretary, Lord President's Private Office)

Karen Stewart (Policy Manager, Scottish Civil Justice Council)

Apologies: Anne Dickson (Scottish Legal Aid Board)

Denise Swanson (Scottish Government)

Sheriff Principal Turnbull

Item 1: Welcome, apologies and agreement of private papers

1. The Chair welcomed those present and noted apologies from Anne Dickson, Denise Swanson and Sheriff Principal Turnbull.
2. **The Committee agreed not to publish the following papers: 4.1, 4.2, 4.2A-B)**

Item 2: Previous meeting

Item 2.1 – Minutes of previous meeting (Paper 2.1)

3. **The Committee approved the minutes from the previous meeting.**
4. The Committee noted that the topic of Public Interest Interventions is included in the Council's business plan for the upcoming year. Members noted they would be keen to take this topic forward if resources permit.

Item 3: Work Programme

Item 3.1 – Update from the Scottish Government on legislative developments

5. No update was available on this occasion.

Item 4: Justice System Reform

Item 4.1 – Simple Procedure Review: Options Paper – Chapter 9 (Paper 4.1)

6. The Chair introduced **Paper 4.1**, which invited members to consider Chapter 9 of the options paper prepared by the Lord President's Private Office ("LPPO"). The options paper was considered by members previously at the Committee meeting on 11 February 2019 but there had been insufficient time to conclude all deliberations that day. Members discussed a number of issues and suggestions raised in Professor Mullen's report and by respondents to the consultation on the review of simple procedure and agreed that a number of matters would not be taken forward as rules amendments.
7. **The Committee agreed the following matters will not be taken forward as rules amendments:**
 - **matters relating to expenses raised by some respondents will not be taken forward under this review. However, it was recognised by members that the level of expenses available under simple procedure will require to be**

reconsidered and that this may be appropriate when a policy review is undertaken in due course;

- concerns regarding the availability of service providers and the associated costs of alternative dispute resolution are matters which are not capable of being addressed by rules amendments;
- sections A2 and A3 of the Claim Form already include space for the claimant to set out a trading name so no amendment to the rules or forms is necessary in this regard;
- there is no requirement to amend the court rules as a consequence of the provisions of the Prescription (Scotland) Act 2018;
- the rules for sending documents to the court should not be widened to include sending documents by email. It was considered undesirable to create a third level of process which could lead to administrative burdens in the courts, potential for confusion and inconsistencies and would undermine the purpose of the integration of the SCTS' Civil Online system with the courts' Integrated Case Management System;
- it was considered that access to justice issues could arise if the rules created a presumption that documents would be sent electronically between parties - members rejected creating any such presumption in court rules;
- a proposal that the rules define the wording "*by the end of the day*" as meaning 5pm on a Monday-Friday, excluding bank holidays was rejected – members agreed that no further definition was necessary;
- the suggestion of extending the timescale for the last date for a respondent lodging a response to a claim was rejected – members noted that most claims are undefended and so extending this timescale would delay resolution in the majority of cases;
- the Response Form already permits a respondent to admit liability but dispute quantum so no amendment to the rules or forms is necessary in this regard;
- the Committee adhered to the Council's policy position that counterclaim procedure is not appropriate for simple procedure cases. The Committee noted its interest in how often the issue of a potential counterclaim is raised as a defence and the number of cases that are conjoined for this reason. **Mark Kubeczka agreed to obtain any available statistics and to report back to members.**

- the suggestion to merge the Time to Pay Application with the Response Form was rejected; the suggestion that Part 5 of the form be amended to allow a respondent to ask for time to pay as an alternative was rejected; the suggestion that the financial information requested in a Time to Pay Application be aligned with the information required in the Common Financial Statement (“CFS”) was rejected – members noted that the CFS form is not intended to be used by the general public.
- the Committee adhered to the policy principle that parties should only have to come to court when it is necessary to do so to progress or resolve their dispute and therefore that a decision may be made by a sheriff considering the papers in the absence of the parties;
- there is no requirement to amend the rules in relation to the sheriff’s case management powers in undisputed claims;
- there should be no restriction on the number of times a case management discussion can be continued;
- the procedure at the case management discussion is within the sheriff’s discretionary case management powers; the rules should not be amended to make provision for a “*pre-case management discussion*”;
- the rules will not be amended to provide parties with an automatic period of adjustment - to do so in every case would increase formality and delay a decision. Members noted that the sheriff could allow a period of adjustment under existing case management powers;
- a suggestion to extend *The List of Evidence Form* is rejected – members noted that to do so would run counter to the aim of streamlining forms as part of this review and may result in parties being less focussed in selecting evidence;
- a request to extend the period for parties to lodge their list and the related evidence prior to the hearing is also rejected;
- there are no amendments required regarding the current rules provisions on hearings;
- In respect that the rules permit the court to vary the time period for enforcement of a decision (Rule 1.8(5)), there is no requirement to amend the rules in this regard;
- That there is no requirement to introduce a deadline in the application rules after which a change of timetable would not be competent. This is on the basis that to do so would increase the formality of proceedings and

would restrict the sheriff's discretion to decide whether to grant such the application;

- In respect that the rules already allow for joint applications there is no requirement to amend the rules to make provision for joint applications;
8. the request to change the language of the rules to adopt the terminology used in small claim and summary cause procedure is rejected. This is on the basis that such a change would go against the ethos of simple procedure since the rules were drafted with the party litigant in mind and the use of plain English was a fundamental aspect of improving accessibility. The Committee noted that terminology across all sets of court rules will be considered in due course under the Rules Rewrite Project.
9. The Committee noted the following matters:
- some consultation responses made suggestions about the functionality of the SCTS' Civil Online portal currently under development, including matters such as the bulk processing of claims and training for practitioners. **These matters have been referred to SCTS for consideration.**
 - the Committee requested SCTS to provide an update on the progress of Civil Online and asked Mark Kubeczka to arrange for the project team to deliver a presentation for the Committee. The Chair asked the Secretariat to contact project team to obtain technical information on the current and potential future capabilities of the system in particular for bulk processing of cases.
 - some consultation responses discussed the need to improve consistency in administrative court practice in simple procedure. The Committee noted that the SCTS Director of Operations has established a simple procedure staff working group to identify and share best practice. **The Committee requested some clarity on the working group and how court users could access it. Mark Kubeczka agreed to look into this and report back to members;**
 - a suggestion was raised by a respondent to the consultation that the use of conference calls in cases should be increased – this is an operational matter and has been referred to SCTS for consideration.
10. The Committee considered appropriate next steps for this review and agreed that there is no requirement to undertake further consultation on rules proposals by way of focus groups.

Item 4.2 – Simple Procedure Review: Rules Amendments (Papers 4.2 and 4.2A-B)

11. **Paper 4.2** invited members to consider and approve the decisions to date for prospective amendments to rules, forms and orders arising from the review of simple procedure. Papers 4.2A-B consisted of annotated rules demonstrating those prospective amendments.

12. **The Committee considered the papers and agreed that their content accurately reflected the Committee's decisions to date in the review of Simple Procedure.**

13. In addition, the Committee discussed the text box in the Claim Form 3A where the case reference number is added by the court. **Members expressed a preference that it be repositioned at the top of the form or as a footnote at the bottom right corner of the form and that its shape be altered to mitigate the population of this box by mistake.**

Item 9: Dates of future meetings

14. Members noted that the date of the next meeting will be issued via email in due course.

**Scottish Civil Justice Council Secretariat
April 2019**