

MEETING OF THE SCOTTISH CIVIL JUSTICE COUNCIL

ACCESS TO JUSTICE COMMITTEE

MONDAY 29 AUGUST AT 3PM

JUDGES CONFERENCE ROOM, PARLIAMENT HOUSE, EDINBURGH

MINUTES

- Members present:**
- Lady Wise (Chair)
 - Colin Lancaster (Scottish Legal Aid Board, SCJC member)
 - Sheriff Arthurson
 - Ruth Crawford QC (Advocate) (by telephone)
 - Paul Reid (Solicitor, SCJC member)
 - Dean Purdie (Solicitor)
 - Ian Maxwell (Families Need Fathers, SCJC member)
 - Jane Williams (Queen Margaret University, SCJC member)
 - Employment Judge Joseph d’Inverno (SCJC member)
 - Professor Frances Wasoff (Edinburgh University)
- In attendance:**
- Nicola Anderson (Legislation Implementation Team, SCTS)
 - Senga Gracie (Legislation Implementation Team, SCTS)
- Support:**
- Kenneth Htet-Khin (Head of Rules Rewrite Drafting Team)
 - Andrew Campbell (Deputy Legal Secretary, LPPO)

Lauren Gibb (SCJC Secretariat)

Karen Stewart (SCJC Secretariat)

Apologies: Sheriff Principal Scott

Yvonne Anderson (Offices of Court of Session)

Catherine Molloy (Solicitor)

Denise Swanson (Scottish Government)

Item 1: Welcome, apologies and agreement of private papers

1. The Chair welcomed those present and introduced Andrew Campbell, who has recently joined the Lord Presidents Private Office. The chair advised that Sheriff Principal Scott's appointment to the Committee has been approved by the Council.
2. Apologies were noted from Sheriff Principal Scott, Yvonne Anderson (Depute, Offices of Court), Catherine Molloy (Solicitor), Denise Swanson (Scottish Government)
3. **The Committee agreed not to publish the following papers: 2.2, 5.1 , 5.1A-E, 5.2, 5.2A, 6.1, 6.1A, 6.2, 6.2A-B, 6.3**
4. **The Committee agreed that it will publish any papers which are already publically available.**

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 had been made on actions since the last meeting.**

Item 3: Proceedings

7. The Chair advised that the proposed revised Committee remit was approved by the Council on 11 July 2016. The Council website has been updated to reflect the changes.

Item 4: Work Programme

Item 4.1 - Update from the Scottish Government on legislative developments

8. As there was no Scottish Government representative at the meeting, no formal update was given. The Chair noted that Papers 4.1A & B which the Committee considered at their previous meeting on 14 June had been marked as Private. The Chair advised members that after the meeting Denise Swanson, the Scottish Government representative, advised that these papers were in the public domain and accordingly could be published. Accordingly, the Secretariat have not itemised these as private papers for the purpose of the minutes and they have been published on the SCJC website.

Item 4.2 - Update from Scottish Legal Aid Board on in court advice projects developed under Making Justice Work Project 3

9. Colin Lancaster provided an oral update on the project. He advised that the project is almost complete so can be removed from the agenda as a standing item.

Item 4.3 - Report from Denise Swanson on seminar regarding Research into Participant Perspectives of Dispute Resolution in the Scottish Courts developed under Making Justice Work Project 3

10. As no Scottish Government representative was present, no oral update was provided. However, the Secretariat will circulate a written report about the seminar which the Scottish Government has provided.

Item 4.4 - Update from the Rules Rewrite Drafting Team

11. Kenneth Htet-Khin provided an update on the work of the Rules Rewrite Drafting Team. The team will soon meet with the Scottish Parliament Delegated Powers and Law Reform Committee to discuss the new simple procedure rules and the accompanying fees instrument. The instrument is soon to be considered by the Costs and Funding Committee and will replicate existing fees provision. The RRDT continue to liaise with the SCTS ICMS project team regarding the introduction of simple procedure. There was an update provided on the work of the SCJC Working Group.
12. Ian Maxwell asked if an updated presentation on the ICMS system could be arranged prior to the system 'going live'. The Secretariat undertook to investigate with the ICMS project team and report back to members.

Item 5: Research and consultations

Item 5.1 - Lay representation and lay support

Item 5.1.1 - Presentation by Halle Turner, Party Litigant Researcher

13. Halle Turner, PHD Candidate at the University of Glasgow, delivered a short presentation about her postgraduate research on party litigants in Scotland. She outlined some of the preliminary findings from the empirical element of her project, particularly in relation to how the civil court process, practice and procedure may affect access to the courts or access to justice for party litigants.

Item 5.1.2 - Overview of rules and guidance (Papers 5.1 and 5.1A-H)

14. The Committee considered Papers 5.1 and 5.1A-H which provided a summary of the current rules of court and an overview of available guidance relating to lay representation and lay support. The Committee considered recommending changes to the rules and guidance.

15. The Committee discussed the guidance available for lay representatives and lay supporters, for example on the SCTS website. The Committee discussed whether the issuing of a practice note about the provision for lay representatives and lay supporters in the courts would be helpful. The committee acknowledged however that these were both operational matters out with the remit of the Council and that there were impending changes to court rules.

16. The Committee discussed some of the practical issues the judiciary face in the courts when lay representative appear in court cases, for example in the leading of evidence. It was noted that whilst the principles of Simple Procedure are that the court process should be quick and efficient, it is sometimes the case that extensive evidence requires to be led (for good reason) and that lay representatives are capable of doing so effectively.

17. The Committee noted current provisions in Northern Ireland where it is possible for a lay representative to receive payment for his or her services. The Committee discussed the related issues and agreed that clarity was required, in particular, on the question of expenses for reasonable outlays for lay representatives. The Committee agreed to consider options for reimbursement of expenses to lay representatives with a view to making recommendations to the Council.

18. The Committee agreed that *the scope of the lay representative's power* and the question of *payment or reimbursement of expenses for lay representatives* were the two pressing issues they would next consider in detail with a view to making any recommendations to the Council.

19. **The Committee instructed the Secretariat to prepare a discussion paper on these specific issues for consideration at the next meeting.**

Item 5.2 - Scottish Government consultation on court fees (Papers 5.2 and 5.2A)

20. The Committee considered papers 5.2 and 5.2A which provided a summary of the Scottish Government's consultation paper regarding Scottish Civil Court Fees.
21. The Committee noted that the proposals on 'front loading' of fees could be a barrier to individuals' accessing justice. It was thought likely that some potential litigants may not go ahead with claims due to the initial expense involved.
22. **The Committee agreed that these concerns be set out in a joint response to the consultation which will be prepared by the Costs and Funding Committee and thereafter submitted to Council for consideration and approval.**

Item 6 – Research and Consultations

6.1 Simple Procedure

6.1.1- Consideration of simple procedure transitional instrument (Paper 6.1 and 6.1A)

23. The Committee considered Papers 6.1 and 6.1A. Kenneth Htet-Khin explained the content of the draft instrument at Paper 6.1A which contains transitional arrangements relating to the Simple Procedure rules. The Committee noted that this instrument is part of the implementation programme for Simple Procedure and will come into force alongside the rules on 28 November 2016.
24. The Committee also noted that whilst the instrument will be further revised, it also includes consequential changes to other instruments which are made in order to allow the new simple procedure to operate alongside and with them.
25. Kenneth Htet-Khin advised that the Simple Procedure Fees instrument will soon be considered by the Costs and Funding Committee and it is intended that the instrument will be circulated to members for consideration by correspondence.
26. **The Committee approved that draft instrument Paper 6.1A be submitted to the Council for consideration and approval on the understanding that the final draft of the Simple Procedure Transitional Instrument would be circulated to members.**

6.1.2 - Consideration of correspondence regarding simple procedure rules (Papers 6.2 and 6.2A-B)

27. The Committee considered the correspondence received from the Society of Messengers at Arms and Sheriff Officers (SMASO) and SCTS (Papers 6.2A and 6.2B) requesting changes to the Simple Procedure Rules which were made on 9 June and are due to come into force on 28 November 2016.
28. SMASO have raised concerns about some areas of the new rules, primarily around the changes to the witnessing of signatures on documents; the service of documents and arrestments on the dependence and the definitions of terms such as 'home' and 'person' within the rules.
29. SCTS have proposed some changes to the rules to give effect to their interpretation of the Council's policy intention on signatures of documents. It is their position that a signature should only be required where absolutely necessary and, where it is thought necessary, provision should be made for an electronic signature unless there is a valid reason not to do so.
- 30. The Committee agreed that a number of minor corrections and typographical errors noted by SMASO be corrected in a revised draft of the instrument.**
- 31. The Committee agreed that SMASO should be consulted when the Committee is considering arrestment provisions in future.**

6.2 Simple Procedure (Special Claims)

6.2.1 - Implementation timetable and consultation plans (Paper 6.3)

32. The Committee considered Paper 6.3 which provided a revised draft timetable for implementation of the Simple Procedure (Special Claims) rules. The paper also sought the Committee's views on consultation proposals for the development of these rules.
33. The SCTS noted that the rules were timetabled to be approved by Council in July 2017 and expressed concerns that the proposed commencement date (26 September 2017) left insufficient time for them to provide adequate staff training.
34. It was discussed whether or not the current commencement date of the rules could be changed from the beginning of the legal year in 2017 (26 September) to a later date and noted that this was a matter for the Making Justice Work Board to determine. The Committee noted that the matter could best be raised by SCTS with the Making Justice Work (MJW) Project Board.
- 35. It was agreed that the draft timetable would be reviewed at the next meeting in order to provide SCTS with an opportunity to discuss the matter with the MJW Board.**

- 36. The Committee agreed that draft rules will be shared with SCTS on an ongoing basis during the development of the simple procedure special claims rules in order to facilitate their training preparation.**
37. The Committee was advised that as a full public consultation took place for the draft Simple Procedure rules, a formal public consultation may therefore not be required for the special claims rules. The Secretariat consider that a general consultation paper will not be appropriate due to the specialist nature of the rules and suggest that targeting stakeholders in fields such as housing and personal injury would be the most effective method of obtaining relevant and useful feedback. The Secretariat therefore proposed to the Committee that a series of focus groups with relevant stakeholders be held.
38. The Committee noted that Professor Fran Wasoff has kindly agreed to facilitate the focus groups for the consultation, if so advised. It is anticipated that prior to the focus group exercise, consultees will be asked to familiarise themselves with the draft Simple Procedure (Special Claims) rules and that an explanatory paper will be provided to them, including specific questions. They will then be asked to take part in a facilitated discussion about the rules and the questions posed.
39. The Committee also noted that as the draft special claims rules for personal injury cases will be developed by the Personal Injury Committee (PIC), it is recommended that PIC lead with consultation on those rules and that consultation on those rules be carried out under the same methodology.
40. The Committee was informed that it should receive a first draft of the special claims rules to review and approve at their October meeting.
- 41. The Committee considered and approved the methodology for consulting on the new Simple Procedure (Special Claims) rules.**
- 42. The Committee approved the Personal Injury Committee leading the consultation on the Personal Injury rules.**

Item 7 - A.O.C.B

43. There was no other business raised.

Item 8 - Dates of future meetings

- Monday 17 October 2016. at 2.15 pm

Scottish Civil Justice Council Secretariat

September 2016