

MEETING OF THE SCOTTISH CIVIL JUSTICE COUNCIL

ACCESS TO JUSTICE COMMITTEE

MONDAY 17 OCTOBER 2016 AT 2.30PM

CONFERENCE ROOM, EDINBURGH SHERIFF COURT, EDINBURGH

MINUTES

- Members present:**
- Lady Wise (Chair)
 - Neil Rawlings (Team Leader ICMS Project, SCTS) (for item 5.1 only)
 - Craig McCorkindale (Director of Civil Courts Reform, SCTS) (for item 5.1 only)
 - Denise Swanson (Scottish Government)
 - Employment Judge Joseph d’Inverno
 - Ruth Crawford QC ((Advocate)
 - Paul Reid (Solicitor)
 - Dean Purdie (Solicitor)
 - Professor Frances Wasoff
 - Ian Maxwell (Families Need Fathers, SCJC member)
 - Jane Williams (Queen Margaret University, SCJC member)
- In attendance:**
- Nicola Anderson (Legislation Implementation Team, SCTS)
 - Senga Gracie (Legislation Implementation Team, SCTS)
- Support:**
- Luke McBratney (Rules Rewrite Drafting Team, Lord President’s Private Office)

Lauren Gibb (Policy Officer, SCJC)

Apologies:

Yvonne Anderson (Depute, Offices of Court)

Colin Lancaster (Scottish Legal Aid Board, SCJC member)

Sheriff Principal Turnbull

Sheriff Arthurson QC

Catherine Molloy (Solicitor)

Item 1: Welcome, apologies and agreement of private papers

1. The Chair welcomed those present and advised that Sheriff Principal Turnbull's appointment to the Committee has been approved by the Council.
2. Apologies were noted from Yvonne Anderson, Colin Lancaster, Sheriff Principal Turnbull, Sheriff Arthurson QC and Catherine Molloy.
3. **The Committee agreed not to publish the following papers: (Papers 2.2, 4.1, 4.1A, 4.2, 4.2A, 5.1, 5.2, 5.3, 5.3A-H)**

Item 2: Previous meeting

Item 2.1 – Minutes of previous meeting (Paper 2.1)

4. **The Committee approved the minutes of the previous meeting.**

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

5. **The Committee noted the progress that had been made on actions since the last meeting.**

Item 3: Work Programme

Item 3.1 - Update from the Scottish Government on legislative developments

6. Denise Swanson provided members with an update on legislative developments in the Scottish Government. Denise advised that the Government's Programme for Government for 2016/17 confirmed that in the current Parliamentary year there would be a bill to implement a Scottish Law Commission report on third

party rights in contracts, to remove the limitation period for survivors of historical child abuse and to implement Sheriff Principal Taylor's review of costs and funding in civil litigation. Denise also advised that work is ongoing to implement the Tribunals (Scotland) Act 2014.

Item 3.2 - Update from the Rules Rewrite Drafting Team

7. Luke McBratney provided an update on the work of the Rules Rewrite Drafting Team. Luke advised that the project was now nearing the end of its first phase, which has involved considering a number of discussion papers on different subjects. The project will now start to move into its second phase which will involve the preparation of draft rules.

Item 4: Research and consultations

Item 4.1 - Lay representation and lay support - consideration of core issues (Papers 4.1 – 4.1A-B)

8. Members considered **Papers 4.1 and 4.1A-B** which provided an overview of the two core issues that the committee had previously identified in relation to lay representation and lay support in Scotland. These were the scope of the lay representative's power and the fees chargeable by a lay representative.
9. The Committee noted Members concerns that there continues to be inconsistencies in courts allowing lay representatives to cross examine witnesses and considered whether or not it wished to draft a rule allowing the Sheriff to make the final decision as to whether or not a lay representative would be permitted to cross examine.
10. Members discussed the potential wording and any potential unintended consequences of such a rule. Members noted that it may open lay representation up to commercial business.
11. **Members agreed to recommend the creation of a rule that did not allow lay representatives to automatically cross examine, however allowed a lay representative to make an application to do so if it would be in the interests of justice.**
12. **Members agreed that the Chair, Secretariat and Drafter should discuss how to take this forward and update the Committee at the next appropriate meeting.**
13. **Members agreed that it would be necessary to discuss the matter with Sheriff Principals before any such rule could be implemented. The Secretariat was instructed to write to Committee Member Sheriff Principal Turnbull and ask for his views on such a rule.**

4.2 Public interest interventions – consideration of request from Anna Poole QC (Papers 4.2 and 4.2A)

14. The Committee considered **Papers 4.2 and 4.2A** which contained a letter requesting changes to the current rules on Public Interest interventions (PIIs) from Anna Poole QC. The letter identifies a number of concerns about the rules and procedure for PIIs in Scotland.
15. The Committee discussed whether or not it should make a recommendation for changes to the rules in relation to PIIs in Scotland. Members discussed the points raised in the letter.
16. Members discussed the scope of PIIs and whether they should be available in a wider range of procedures, the expenses orders that may be made relating to a PII, and the form of intervention in a PII.
17. **The Committee agreed that PIIs are important for ensuring access to justice and that the procedure for them should not be unnecessarily complex or difficult.**
18. **The Committee agreed that many of the suggestions in Anna Poole QC's paper were worthy of further consideration. The Secretariat was instructed to prepare a paper on some of the issues for consideration at the next appropriate meeting.**

Item 5: Justice System Reform: Rules Rewrite

Item 5.1 Refresher demonstration of ICMS system (Oral)

19. Neil Rawlings, ICMS Team Leader and Craig McCorkindale, Director of Civil Courts Reform, delivered a demonstration of the new ICMS portal scheduled to go live to court users on 28 November 2016. Neil demonstrated how a court user would initiate a claim using the online ICMS portal and how court users could track their cases online.
20. **Members agreed that it would be useful to have another update from ICMS in relation to progress once the portal had been live for some time.**

Item 5.2 Simple Procedure – Consideration of trainee appearances in simple procedure (Paper 5.1)

21. Members considered **Paper 5.1** which contained correspondence from Douglas McGregor, Professional Support Lawyer at Brodies LLP, seeking clarification about the Committee's policy intention on lay representation and how it impacts upon first year legal trainees appearing in Simple Procedure cases in the sheriff court.

22. Members noted the concerns raised in the correspondence that rules which seek to prohibit first year trainees from appearing in simple procedure cases could inhibit the development of future court lawyers. Members also noted that supervising solicitors were ultimately responsible for the actions of their trainees.
23. **The Committee confirmed that there had been no policy intention to change the ability of first year legal trainees to appear in the sheriff court in simple procedure cases and that it was important they be allowed to continue to appear.**
24. **The Committee instructed the LPPO to prepare draft amendments to the definition of ‘legal representative’ in the Simple Procedure rules which would enable first year trainees to appear in court in simple procedure cases.**

Item 5.3 Simple Procedure (Special Claims)

Item 5.3.1 - Consideration of draft implementation timetable (Paper 5.2)

25. Members considered **Paper 5.2** which presented the Committee with a draft implementation timetable for the Simple Procedure (Special Claims) Rules. The Committee previously considered this timetable at its August meeting, at which time SCTS raised concerns about the proposed commencement date. The Committee postponed approval of the timetable in order to allow SCTS to discuss their concerns with the Making Justice Work (MJW) Programme Board.
26. Members noted that following the MJW Programme Board meeting in September 2016, the proposed commencement date of 26 September 2017 remains unchanged.
27. **The Committee approved the implementation timetable for the Simple Procedure (Special Claims) Rules.**

Item 5.3.2 - Consideration of draft rules (Papers 5.3 and 5.3A-H)

28. The Committee considered **Papers 5.3 and 5.3A-H** which contain draft simple procedure (special claims) rules relating to claims involving; multiple proceedings, forthcoming, aliment, heritable property and child support.
29. The Committee made a number of recommendations relating to the draft rules.
30. Members noted that the Committee previously agreed that consultation on the rules will be carried out via focus groups with key stakeholders. This is scheduled to be carried out between December 2016 and February 2016.

31. **The Committee agreed that a readability exercise should also be carried out as part of the informal consultation on the draft special claims rules. This is with a view to ensuring that lay persons can follow the special claims rules.**
32. **The Committee approved the draft special claims rules for the purpose of consultation.**

Item 6 - A.O.C.B

33. There was no other business raised.

Item 7 - Dates of future meetings

34. The Committee noted the date and time of the next meeting

- Monday 12 December 2016 at 3pm

35. Members noted that some dates for 2017 meetings had now been agreed and were available to view on the Scottish Civil Justice Council website.

Scottish Civil Justice Council Secretariat

September 2016