

**MEETING OF THE SCOTTISH CIVIL JUSTICE COUNCIL  
ACCESS TO JUSTICE COMMITTEE  
MONDAY 14 MARCH 2022 AT 4.00 PM  
VIA CISCO WEBEX**

**MINUTES**

**Present:** Lady Carmichael (Chair)  
Joel Conn  
Employment Judge d'Inverno  
Thomas Docherty  
Fiona Drysdale  
Gillian Fyfe (Citizens Advice Scotland)  
Dean Purdie

**Attending:** Craig Anderson (Court of Session)  
David Smith (SCTS Legislation Implementation Team)  
Kirsty Hyslop (SCTS Legislation Implementation Team)

**Support:** Graeme Welsh (Secretary, SCJC)  
Karen Stewart (SCJC)  
Paula Preston (SCJC)  
Edward McHugh (LPPO)

**Item 1: Welcome, apologies and agreement of private papers**

1. The Chair welcomed those present and noted apologies from: Sheriff Principal Turnbull, Sheriff Martin-Brown, Diane Machin, Hazel Thoms and Denise Swanson.
2. Members agreed that the following private papers will not be published: Papers 3.1, 3.1A, 3.1AA-C

**Item 2: Previous meeting**

*Item 2.1 – Items considered by correspondence (Paper 2.1)*

3. **Paper 2.1** provided a summary of one matter considered by correspondence since the last meeting. In considering matters by correspondence, members are advised that a nil response will be treated as consent, unless noted otherwise.

- Administrative Matters: Item 2022/01 was issued on 21 January 2022 and invited members to approve the draft minutes of the Committee meeting held on 17 January 2022. Responses were invited by close of business on 28 January 2022. One response was received noting a minor amendment. The minutes were approved and published on the Council website.

### **Item 3: Rules Review**

#### *Item 3.1 Simple Procedure Rules Review (Paper 3.1, 3.1A, 3.1AA-C)*

4. The Chair introduced **Paper 3.1** which provided an overview of the outputs of the Simple Procedure Review and explained the rule changes made in the revised draft instrument produced at **Paper 3.1A** for members' consideration.
5. Members considered and discussed the rules provisions implementing the Committee's policy instructions. This included revisions instructed since the last Committee meeting as well as some minor changes made in consultation with SCTS Legislation Implementation Team to improve operational effectiveness. In particular, members noted and approved the following rule changes:
  - Rule 6.11 is amended to remove references to 'Further Claimant' and 'Further Respondent' forms which are omitted by the instrument. The provisions in the rule clarify the circumstances in which the sheriff clerk may formally serve the Claim Form. That is, by a next – day postal service which records delivery if: (a) the claimant is not a company, limited liability partnership or partnership, and (b) the claimant is not legally represented.
  - Rule 7.5 - In a disputed claim, the sheriff may order formal service on additional respondents in a case prior to issuing first written orders. This means that an additional respondent will have 3 weeks from the date of service to respond to the claim. Rule 7.5 is therefore amended to make provision that, if the sheriff makes such an order for service upon an additional respondent, the sheriff will require to issue written orders within a period of two weeks from the date on which the additional respondent must respond.
  - Rule 8.4 is amended to provide that an 'unless order' is to be formally served by the sheriff clerk on the party given the order, unless the sheriff directs otherwise.
  - New Part 9 - procedures for pausing a case: The sheriff clerk must present a case which is paused for 6 months or more to the sheriff who may serve

written orders on the parties (unless orders); the written order must be formally served by the sheriff clerk unless otherwise directed; Unless the parties do the steps ordered, the sheriff may decide the case (this is to include dismissal of all or part of claim, award claimant some or all of what is asked for). The rules here mirror the wording of rule 8.5 for procedural consistency.

- Rule 13.3(4) is amended by deletion of the words 'before it is sent to a party'. The effect of the amendment is that the sheriff may correct any errors in the Decision Form at any stage. A new rule is drafted and provides that the party in possession of the decision form which is to be corrected, must return that form to the court before a corrected decision form is issued. In addition, a new rule provides for the decision form to be sent to all parties in a case.
- Rule 15.5 - In certain circumstances, set out in the rule, a claimant may make an Alternative Decision Application asking the sheriff to make an alternative decision in the case. A new rule at subsection provides that where such an application is granted, a copy of the alternative Decision Form is to be sent to all parties. This rule is intended to provide procedural consistency with rule 13.
- Rule 18.2 is amended to clarify that the sheriff clerk may formally serve by way of postal service only.

Additional revisions to forms and standard orders:

- Form 3A - All sections of the form relating to contact preferences now incorporate options for: online (i.e. via the civil online portal), by post and by email.
  - Form 4A All sections of the form relating to contact preferences are to incorporate options for: online (i.e. via the civil online portal), by post and by email.
  - Standard Order 14 is revised and provides for (a) the respondent to serve the Claim Form and the Response Form on the additional respondent within three weeks; (b) the additional respondent to respond to the claim within three weeks from the date on which the forms are served.
6. Members considered and discussed a note from SCTS Legislation Implementation Team about certain aspects of the provisions in the draft instrument which regulate formal service of initiating documents by email.

7. Members noted that the postponement of the Simple Procedure Review due to the impact of the pandemic has in fact provided an opportunity to take advantage of the wider use of electronic communications in the civil justice system over the past two years. Members agreed by majority, that the Committee should build on and make the most of these changes by incorporating new provisions for service by email within the draft rules. Members agreed by majority, that the rules making provision for email service, were fit for purpose.
8. Members noted that Rule 18.2, which regulates the methods of formal service of documents on persons living in Scotland, is to be reconsidered when work on Simple Procedure Special Claims is taken forward to ensure the wording of the rule does not obstruct the commencement of urgent business.
9. **The Committee approved the draft rules instrument in Paper 3.1A and the schedule of forms and standard orders in Paper 3.1AA for submission to the Scottish Civil Justice Council for consideration and approval subject to any stylistic or typographical amendment.**

#### **Item 4: Work Programme**

##### *Item 4.1 Stakeholder engagement update (Oral)*

10. The Chair noted discussions from the previous meeting on the matter of stakeholder engagement and the proposal to hold an engagement event with university law clinics, in-court advisers and other advisory bodies to hear about access to justice issues. An event is now being planned by the secretariat and will be scheduled for late May.
11. Members discussed the benefits of developing a strategy on engagement, research and analysis in order to coordinate various activities including:
  - The role of the Committee in reviewing feedback and data in relation to user experience on Modes of Attendance and Simple Procedure;
  - Ongoing engagement and collaboration with stakeholders who are best placed to inform on changes to practice and procedure; and
  - Reviewing and directing research in pursuance of addressing barriers for access to justice.
12. The secretariat will develop a draft strategy for members to consider at their next meeting.

#### **Item 5: AOB**

13. There was no other business raised.

**Date of next meeting**

14. The next meeting is on 13 June 2022 at 4.00 pm via Webex.

**Scottish Civil Justice Council Secretariat  
March 2022**