

SCOTTISH CIVIL JUSTICE COUNCIL

ACCESS TO JUSTICE COMMITTEE

MINUTES

PARLIAMENT HOUSE, 4.30PM, MONDAY 07 JULY 2014

Members present: Lady Wise (Chair)
Sheriff Arthurson (Edinburgh Sheriff Court)
Kenneth Forrest (SCJC member)
Employment Judge Joseph d'Inverno (SCJC member)
Lauren Wood (SCJC member)
Ian Maxwell (SCJC member)
Denise Swanson (Scottish Government representative)
Colin Lancaster (Scottish Legal Aid Board)

In attendance: Kenny Htet-Khin (Head of Rules Rewrite Drafting Team)
Mandy Williams (Deputy Head, Policy and Legislation Branch, SCS)
Yvonne Anderson (Depute in Charge of Offices of Court, Court of Session)
Carmen Murray (Policy Officer, SCJC)

Apologies: Ruth Crawford QC (Advocate)
Ronnie Conway (Solicitor advocate, Bonnar Accident Law)
Catherine Molloy (Solicitor, East Lothian Council)
Professor Frances Wasoff (SCJC member)

Item 1: Introduction, welcome, apologies and private papers

1. The Chair welcomed those present and noted apologies.
2. **Members agreed not to publish the following papers: 5.1A, 5.2A and 6.1A-C.**

Item 2: Previous Meeting

Item 2.1: Minutes of previous meeting [Paper 2.1]

3. **Subject to one minor amendment, the Committee approved the minutes of the previous meeting.**

Item 3: Proceedings

Item 3.1: Update on activity of the SCJC

4. Carmen Murray provided an oral update on the activity of the Scottish Civil Justice Council (SCJC), including work relating to the Courts Reform (Scotland) Bill and consideration of various sets of draft rules. Members noted that the SCJC's standing orders had been revised and that the updated version would be circulated in due course.

Item 4: Forward Work Programme

Item 4.1: Update on the Courts Reform (Sc) Bill [Paper 4.1]

5. Carmen Murray provided an oral update on the progress of the Courts Reform Bill covering Stage 2 amendments as detailed in **Paper 4.1**. In particular, members were advised that the proposed new privative limit had been set at £100,000 and that a question over the Council's power to make fee regulations had been resolved.

Item 4.2: Update from the Scottish Government on legislative developments

6. Denise Swanson provided an oral update from the Scottish Government on legislative developments and initiatives of interest to the Committee, covering courts reform, Sheriff Principal Taylor's Report and the EU Directive and Regulations relating to Alternative Dispute Resolution (ADR) and Online Dispute Resolution (ODR). In relation to the EU Directive, members noted that Citizens Advice Scotland (CAS) was planning a stakeholder discussion event.

Item 4.3 Update from the Scottish Legal Aid Board on Making Justice Work Project 3: Enabling Access to Justice

7. Colin Lancaster provided an oral update from the Scottish Legal Aid Board ("the Board") on *Making Justice Work Project 3: Enabling Access to Justice*, highlighting

developments which have taken place since the last meeting of the Committee. In particular, Mr Lancaster discussed the development of a research specification on ADR, explaining that the overall purpose of the research would be to provide evidence about the drivers and motivations behind the dispute resolution paths chosen by people in dispute and to explore which type of case may be amendable to ADR. Mr Lancaster advised that he had invited the SCJC to join in funding the ADR research project, along with the Board and Scottish Government.

8. **Members agreed that the proposed research project was of interest, given the Committee's remit, and noted that the Secretariat were considering the SCJC's research priorities for the forthcoming year and exploring opportunities to contribute to the evaluation of civil courts reform. It was also noted that proposals for research would be considered at the next meeting of the SCJC and that members' views on the merits of the Board's proposal would be sought in advance by correspondence.**

Item 4.4 Update on the Justice Digital Strategy

9. Lauren Wood, as a member of the SCJC ICT Committee, provided an oral update on the Justice Digital Strategy. The ICT Committee had recently met with the MJW Justice Digital Strategy Team to discuss progress on the Strategy which was due to be published soon.

Item 5: Access to Justice Literature Review

Item 5.1: Literature Review of Party Litigants [Papers 5.1 and 5.1A]

10. **The Committee approved a revised draft [Paper 5.1A] of the literature review of arrangements for party litigants.**
11. **Members discussed next steps in relation to the review, particularly with regards to opportunities to improve the guidance and information available to party litigants, lay advisors and lay representatives. It was agreed that this should be tabled for discussion at a future meeting and the Secretariat was instructed to prepare a position paper on matters arising from the review in due course.**
12. Members noted that Citizens Advice Scotland, in connection with Shelter Scotland, were intending to commence a research project around the interpretation of the court rules on lay representation across different sheriff courts in Scotland. **The Committee noted that the findings of the project might be useful in taking**

forward policy in this area and agreed that this matter should be discussed at the next meeting with an update from CAS.

Item 5.2: Literature Review of ADR methods [Papers 5.2 and 5.2A]

13. The Committee approved a revised draft [Paper 5.2A] of the literature review of ADR methods. Given the fast-paced and ever changing nature of the subject, it was agreed that the published version of the review should reflect that information contained in the review was correct as at July 2014.
14. Members discussed next steps and were of the view that the Board's proposed research on ADR would be particularly useful in this regard. It was agreed that this should be tabled for further discussion at the next meeting.

Item 6: Rules Rewrite

Item 6.1: Rules Rewrite – Style Guide and instructing process [Papers 6.1A-D]

15. Kenny Htet-Khin spoke to the content of **Papers 6.1A-D** and provided the Committee with an update on the progress of the Rules Rewrite Project, covering the priorities for the year ahead.
16. **Paper 6.1A** was a draft style guide for rules, mainly for use by the drafting team, **Paper 6.1B** provided an outline process for instructing rules, **Paper 6.1C** provided a template for covering papers to accompany proposals for rules and **Paper 6.1D** detailed the responsibilities of each committee under the project.

Item 7: Future business

Item 7.1: Date of Next Meeting

17. Members noted that the next meeting would be at 4.30pm on 06 October 2014.

Item 8: A.O.C.B

Form 12.B.2 (Lay Representation) – Rules of the Court of Session

18. The Chair informed Members of a request which had been received from Lord Menzies to amend Form 12.B.2 of the Rules of the Court of Session, which allows a

party litigant to apply for Lay Representation in the Court of Session. It was explained that the Form currently requires the proposed lay representative to make five declarations relating to: financial interests, confidentiality, convictions and whether or not they have previously been declared a vexatious litigant. Lord Menzies had proposed that the form be amended to include a sixth declaration as to any 'conflict of interests'.

19. **Members agreed that it would be useful to include a sixth declaration as to any 'conflict of interest' in Form 12.B.2 and that this should also be replicated in the sheriff court. Members recognised that the concept of "conflict of interest" may be difficult for a proposed lay representative to understand. It was agreed that a note and possible draft rules should be prepared for consideration at the next meeting.**

Citizens Advice Scotland

20. Lauren Wood highlighted to members that CAS and Shelter were working together to increase the quantity of written decisions published from the lower tiers of the civil court (particularly in relation to housing cases). Miss Wood explained that there may be difficulties in predictability of outcome and transparency as a result of important decisions at this level not being publicly available. **Members agreed that this was an important access to justice issue and that it would be beneficial to see more sheriff court decisions available to the public.** However, it was noted that publication of decisions is currently at the discretion of the individual sheriff and that it may be useful if CAS were to approach the Sheriffs Principal directly to discuss the matter further.

Scottish Civil Justice Council Secretariat

July 2014