

30th September 2013

For the attention of Lisa Gamble:
Scottish Civil Justice Council
Parliament House
Edinburgh
EH1 1RQ

Dear Ms Gamble

SCJC Consultation on Reporting Restrictions

We are pleased to attach our response to the consultation.

We would, however, seek to raise two matters arising from the consultation itself.

First, we note at the outset that the case which prompted these changes (Application of BBC Scotland re A v Secretary of State for the Home Department [2012] CSIH 43) is under appeal to the Supreme Court. All the matters of substantive law in this area will be authoritatively addressed by that Court after the hearing on 16th & 17th December 2013, the case having specifically been given early disposal because of the importance and urgency of the issues raised.

We note that the bringing forward of draft orders or new Rules was postponed specifically '*pending the conclusion of the proceedings.*' The proceedings have **not** concluded, and it is respectfully submitted that the delay of a few months more is essential to include the findings of the Supreme Court.

That hearing is to take place only 10 weeks after this consultation period has closed, and presumably whilst responses are being evaluated.

The Supreme Court is likely to offer substantive reasoning as to the legal basis upon which section 11 orders are appropriately granted.

We therefore ask that the Council consider extending the consultation to allow the Council and interested parties the opportunity of reflecting on the findings of the Supreme Court. It will provide a full and clear statement of the law to which these draft rules are designed to give effect.

We note the history of these proposals narrated in paragraphs 15-18 of the Consultation document. It is apparent that there has been no particular urgency behind the desire to implement

/new rules ...

new rules covering orders under section 11 (or indeed any of the other orders amounting to reporting restrictions). This matter was brought into sharp relief by the decision in McKay and BBC Scotland v The United Kingdom 7th December 2010 relating to section 4 orders nearly three years ago.

Secondly, we regret that we cannot agree with the statement of the current law contained within the consultation document. (para 2). The exercise of any inherent power is, in fact, one of the principal aspects of the appeal to the Supreme Court in December.

In the event that the Council was minded to allow further responses to the consultation in light of the Supreme Court's deliberations, we will be very happy to contribute to this process further.

Yours sincerely



Rosalind M M McInnes
Principal Solicitor