

**SCOTTISH CIVIL JUSTICE COUNCIL
FAMILY LAW COMMITTEE**

MINUTES

PARLIAMENT HOUSE, MONDAY 13 APRIL 2015

Members present: Lord Brailsford, Chair
Sheriff McCulloch
Sheriff Tait
Lynda Brabender, Advocate
Stephen Brand, Solicitor
Professor Margaret Ross, Head of the College of Arts
and Social Sciences, Aberdeen University
Catriona Whyte, Solicitor, Scottish Legal Aid Board
Simon Stockwell, Head of Family and Property Law,
Scottish Government

In attendance: Gillian Prentice, Deputy Principal Clerk of Session
Ian Clark, Court Services Team, Scottish Courts and
Tribunals Service
John Thomson, Deputy Legal Secretary to the Lord
President
Anne Hampson, Policy Officer, Scottish Civil Justice
Council

Apologies: Clair McLachlan, Solicitor
Nicola Anderson, Policy and Legislation Branch,
Scottish Courts and Tribunals Service
Morag Driscoll, Director, Scottish Law Centre

Item 1: Introduction, welcome, private papers and apologies

1. The Chair welcomed those present and noted apologies.
2. The Chair introduced Sheriff Fiona Tait, resident at Perth Sheriff Court who was attending her first meeting of the Family Law Committee (FLC) having been appointed to sit as a member by the Scottish Civil Justice Council (SCJC) at its 16 March 2015 meeting.

3. **The Committee agreed not to publish the following papers: Papers 3.1, 4.1, 4.1A, 4.2, 4.2A, 4.2B, 5.1, 5.1A, 5.1B, 6.1, and 6.1A.**

Item 2: Minutes of Meetings [Paper 2.1]

4. **The Committee approved, with minor amendments, the minutes of the previous meeting.**

Item 3: Forward work programme

Item 3.1 Work Tracker [Paper 3.1]

5. Members queried what was happening in relation to the proposed parallel SCJC/Scottish Government (SG)/ consultations on the Extension of Simplified Divorce. Simon Stockwell explained that the SG had some outstanding issues to consider. He also advised that item B3 on the Work Tracker (Appeals under section 44A of the Criminal Procedure (Scotland) Act 1995) was currently being progressed and that the SG would provide Secretariat/LPPO with a draft of its regulations by the end of May.
6. **The Committee noted the work tracker and the update provided.**

Item 4: Secondary Legislation

Item 4.1 –Child Welfare Reporters [Papers 4.1 and 4.1A-B]

7. At its 23 February 2015 meeting the FLC considered revised draft rules alongside a letter from the SG's sub-group on child welfare reporters which raised issues around the interlocutor and the timescale for the production of the report. The Committee agreed that an illustrative revised draft be prepared in line with the views expressed at the meeting for consideration at the following FLC meeting.
8. John Thomson spoke to the content of **Papers 4.1 and 4.1A** and invited the Committee to discuss the issues raised in **Paper 4.1**. There was discussion of the mechanism for incorporating a checklist into the interlocutor, the categorisation of the 'issues' to be addressed in reports, whether the issues should be specified in the checklist, whether there remained a need for the rules to confer standard powers, whether the rules should prescribe the timescale for the production of reports, and whether the same approach on these issues should extend to the Court of Session.

9. Following discussion around the issues raised the Committee agreed that a number of the difficulties identified would be avoided if rules were to provide for a distinct category of appointment under which the remit of the Reporter was restricted to obtaining the views of the child and reporting those views to the court. The Deputy Legal Secretary was therefore directed to give effect to this in a further revised draft of rules to be prepared for consideration at the next meeting.

10. The Committee further agreed that it was content:

- with the draft rules providing for the optional use of a checklist being annexed to the interlocutor appointing a Child Welfare Reporter, and with the suggested approach to give effect to this;
- that the provisions at draft rule 33.20A(1)(a) to (h) be omitted as unnecessary in the light the prescriptive approach to the specifying of enquiries;
- with the draft rule setting a deadline for reports to be sent to the court three clear days before the relevant hearing; and
- that equivalent modifications should be made to the corresponding draft Court of Session rules.

11. In relation to the appointment of a local authority to report on a child, the rules could not impose a deadline for the submission of the report and that this was a matter for primary legislation. Simon Stockwell suggested that the Scottish Government could write to the Association of Directors of Social Work on this issue and members agreed that this would be helpful.

Item 4.2 – Child Support Fees [Paper 4.2 and 4.2A-B]

12. Paper 4.2 provided Members with an update regarding proposed amendments to the Child Support Rules in the Act of Sederunt (Child Support Rules) 1993 (the 1993 Rules). The FLC considered initial policy and legal advice at its 23 February 2015 meeting and agreed that amended forms to the 1993 Rules be submitted for consideration at the 13 April 2015 FLC meeting.

13. John Thomson spoke to this item and advised that as there remain a number of unresolved issues LPPO were not yet in a position to invite the FLC to consider a draft Act of Sederunt, but expected to be in a position to do so at the next meeting.

14. Members noted the position and agreed that consideration of draft rules be deferred to a future meeting.

Item 5: Research Project

Item 5.1 Case Management in Family Actions – Research Proposal [Papers 5.1 and 5.1A-B]

15. At its meeting on 23 February 2015, the FLC considered a paper in relation to the approach and direction of the proposed research on case management in family actions. Members supported a two phased approach and agreed that the administration of questionnaires to sheriffs throughout Scotland seeking views on their experiences of case management hearing should be a primary phase of the research.

16. Ian Clark spoke to this item and explained that he had introduced section one into the questionnaire at **Paper 5.1A** but that the other sections were based on previous drafting work. Members discussed the questionnaire for sheriffs and made suggested amendments around:

- a. Inserting new questions at the start of Section 2 in order to elicit the perceived characteristics of 'effective' and 'active' case management
- b. Removing the routing after Q6
- c. Inserting new questions to explore reasons for answering 'No' to Q9, Q10 and Q11
- d. Modifying the wording at Q17 and Q18 to avoid respondents differentiating between procedural timetables in court rules and procedural timetables fixed by the court in an interlocutor.

17. It was suggested that capturing wider views would also be desirable, but noted that phase one of the research would provide initial hard data from sheriffs and seeking wider views from other participants in family actions would be part of phase two of the research.

18. Ian also mentioned Mr Justice Ryder's 2012 report on modernisation of family justice; the 8th Report in Session 2014-15 of the UK Parliament's Justice Committee - Impact of changes to civil legal aid under Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (published March 2015) and Elaine Samuel's evaluation of commercial procedure in Glasgow Sheriff Court (though as this was published in 2005 its utility may be limited).

19. **The Committee agreed that, subject to the amendments discussed, the revised questionnaire should be submitted to SCJC for sign-off and the first two of the reports mentioned by Ian Clark should be circulated to members.**
20. It was noted that work was being undertaken on developing a new Integrated Case Management system. Gillian Prentice explained that the contract had been awarded to Kainos; a Scottish Courts and Tribunals team had been set up to work alongside the contractors, initially on a Civil Case Management System, and that this work was currently in the discovery phase. **Members advised that they would welcome further information on this project at the next FLC meeting.**

Item 6: Correspondence

21. Both Sheriff Aisha Anwar and Sheriff Wendy Sheehan approached the secretariat with proposals for changes to Chapter 33AA of the Ordinary Cause Rules (OCR). The correspondence was brought to the Committee's attention at its 13 April 2015 meeting.
22. **Following discussion members agreed that, given that the FLC is currently developing a research brief on the operation of Chapter 33AA OCR (and the operation of case management in sheriff court family actions more generally) with a view to informing the review and overhaul of OCR as part of the forthcoming rules re-write project, it would be better to delay consideration of the suggested changes until the outcome of the research is known.**
23. **The Committee also agreed that a forward work programme should be prepared anticipating and sketching out areas that may realistically be taken forward, including Sheriff Anwar and Sheriff Sheehan's suggestions. Members were invited to forward ideas to Secretariat and LPPO.**

Item 7: A.O.C.B.

24. No issues were raised under this item.

Item 8: Date of next meeting

- **The date of the next meeting is Monday 22 June 2015.**