

**SCOTTISH CIVIL JUSTICE COUNCIL
FAMILY LAW COMMITTEE**

MINUTES

PARLIAMENT HOUSE, MONDAY 19 OCTOBER 2015

Members present: Lord Brailsford, Chair
Sheriff McCulloch
Sheriff Tait
Lynda Brabender, Advocate
Stephen Brand, Solicitor
Ian Maxwell, Families Need Fathers, SCJC member
Professor Margaret Ross, Head of the College of Arts
and Social Sciences, Aberdeen University
Fiona Jones, Clan Childlaw
Catriona Whyte, Solicitor, Scottish Legal Aid Board
Simon Stockwell, Head of Family and Property Law,
Scottish Government

In attendance: Nicola Anderson, Policy and Legislation Branch,
Scottish Courts and Tribunals Service
Craig McCorkindale, Director for Civil Courts Reform,
Scottish Courts and Tribunals Service
Jackie Powell, Operations Delivery, Scottish Courts
and Tribunals Service
Robert Marshall, Deputy Director, Care and Justice,
Scottish Government
Inez Manson, Deputy Legal Secretary to the Lord
President
Anne Hampson, Policy Officer, Scottish Civil Justice
Council

Apologies: Clair McLachlan, Solicitor
Gillian Prentice, Deputy Principal Clerk of Session

Item 1: Introduction, welcome, private papers and apologies

1. The Chair welcomed those present and noted apologies.

2. The Chair introduced and welcomed:

- Fiona Jones, Clan Childlaw 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 28 September 2015 meeting ;
- Craig McCorkindale, SCTS Director for Civil Courts Reform who is leading on the development of the new Integrated Case Management System (ICMS) and Jackie Powell, Business Lead ICMS who were attending the meeting to speak to Agenda Item 3 and to demonstrate available prototypes to members; and
- Robert Marshall who was attending the meeting as an observer in relation to Agenda Item 4.

3. The Chair also recorded his thanks to Morag Driscoll for her valuable input during her time on the Committee.

4. **The Committee agreed not to publish the following papers: Papers 4.1, 5.1, 5.2, 5.3, 6.1, 6.1A-B, 7.1, 7.1A –B and 7.1D**

Item 2: Minutes of Meetings [Paper 2.1]

5. **The Committee approved, with a minor amendment to paragraph 17, the minutes of the previous meeting.**

Item 3: Integrated Case Management System

Item 3.1 Update on Integrated Case Management System

6. Following an update from Craig McCorkindale members agreed at the 22 June 2015 meeting that that Craig should be invited to its 19 October meeting to go through the available prototypes.

7. Craig provided the Committee with an update on the new SCTS case management system and advised that there had been significant progress in relation to the core functionality of the prototypes. He advised that the system was scheduled to “go live” in the latter half of 2016. Craig emphasised that the key was getting the right front end process in place for gathering management information. He informed the Committee that the

system was intended to be intuitive and was being built in bite sized chunks with frequent feedback from users.

8. Jackie Powell then took members through an example of case registration explaining each part of the process. She said that there had been, and would continue to be, a lot of stakeholder engagement and that the number of filters for case detail was dependant on the business volume and the complexity of the type of action with some actions requiring only one filter and others requiring 2 or 3 layers of detail. Jackie went on to explain that some issues were still being teased out and, while using the electronic system will not be mandatory, work was ongoing to allow information to be submitted into the system by solicitors and then checked by SCTS staff.
9. Members asked what part the FLC could play in relation to e.g. business classifications, drop down lists, multiple craves. Craig confirmed that the ICMS Team would come back to a future FLC meeting with business classifications in relation to family law cases before they are signed off.
- 10. The Chair thanked Craig and Jackie for their presentation and members noted that they would provide information on classifications at a future meeting.**

Item 4: Proceedings

Item 4.1 Remit of the Family Law Committee [Paper 4.1]

11. There was discussion at the Committee's 22 June 2015 meeting around how some of the issues noted in the forward work programme table fitted into the remit of the Committee. Following this discussion, it was suggested that Secretariat and LPPO prepare a revised form of wording for the FLC remit to be considered at the next meeting.
12. The Chair invited views on the proposed revised remit of the Committee and reminded members that it is ultimately for the SCJC to set the remit of its Committees and that the FLC could only undertake work that falls with its remit. He also advised members that the remit of the FLC cannot extend beyond court procedure and practice into wider family law issues of justice or policy.
13. A range of views were expressed in relation to what the remit should contain and how the forward work programme could best be progressed. Ian Maxwell advised that the SCJC intends to have a strategy meeting to

discuss work priorities once the new Lord President has been appointed. Ian suggested that it would be appropriate for any comments to be prepared and put to the Council for consideration at that meeting.

14. Robert Marshall, Fiona Jones and Lynda Brabender agreed to consider and put forward proposals in relation to the remit of the FLC for the consideration of and discussion by members. **Members agreed that Secretariat should identify a date for an additional meeting for the full Committee to discuss these proposals.**

Item 5: Forward work programme

Item 5.1 Work Tracker [Paper 5.1]

15. Anne Hampson confirmed that the recommendations in the Scottish Law Commission report on judicial factors had been noted for consideration.

16. The Committee noted the work tracker and suggested one amendment.

Item 5.2 Forward Work Programme table [Paper 5.2]

17. Discussion around the forward work programme took place under agenda Item 4.

Item 5.3 Child Welfare Reporters [Papers 5.3 and 5.3A]

18. Sheriff McCulloch raised the issue of an information gap in regard to publicising the new rules in relation to the appointment of child welfare reporters (previously called bar reporters). He queried what the Committee could do in advising sheriff clerks and bar reporters of the nature of these changes.
19. Nicola Anderson confirmed that guidance had been issued to sheriff clerks last month. Simon Stockwell informed members that the Scottish Government would be issuing a Circular to key bodies with a link to the guidance and other materials prepared by the Child Welfare Reporters Working Group (CWRWG). Ian Maxwell confirmed that Families Need Fathers would be reframing and issuing its own guidance.
20. Members then discussed paper 5.3A. on the wider work of the CWRWG, which Simon Stockwell provided to the Committee.

21. In addition to considering issues in relation to the appointment of child welfare reporters the CWRWG also prepared a Guide for Litigants, Instructions for Reporters and a draft scheme for membership of the lists of persons who can be appointed as child welfare reporters (and of persons who can be appointed as curators *ad litem* to a child).
22. Paper 5.3A also advised that the Scottish Ministers are considering if they should consult the Lord President about making an Order under sections 105 and 106 of the Courts Reform (Scotland) Act 2014 to enable the Court of Session to regulate the fees of child welfare reporters.
23. Members indicated that a guide for children should be produced. A point was raised in relation to methods of communication with children. It was suggested that the guidance to reporters should encourage the use of all appropriate ways of obtaining a child's views. Members noted that there was on-going discussion in the CWRWG on whether children with capacity could sign mandates.
24. **The Committee agreed that a Memorandum from the Chair should be issued to the judiciary bringing their attention to these new court rules. Members also indicated that communications should be added to the agenda for a future meeting.**

Item 5.4 Voice of the Child

25. Simon Stockwell informed members that the Scottish Government was developing a paper in relation to the voice of the child for consideration at the next meeting. **Members noted this update.**

Item 6: Research and Consultation

Item 6.1 Procedures in the Employment Tribunal [Papers 6.1 and 6.1A-B]

26. The Committee considered two papers prepared by Judge d'Inverno about case management and judicial mediation in the Employment Tribunal which had been remitted to the Committee by the SCJC. **Members agreed that the papers were helpful and that they should be taken into account in the Committee's consideration of research into case management.**

Item 6.2 Case Management in Family Actions – Phase 1 Research Proposal Update

27. Anne Hampson informed members that a disappointingly low number of responses to the questionnaire had been received by the extended closing date of 02 October and that it would be difficult to reach any meaningful conclusions based on an analysis of so few responses.
28. **The Committee agreed that the questionnaire should be re-published on the Judicial Hub and that the Chair should write to Sheriffs Principal to ask that they encourage sheriffs in their Sherifffdom to complete the questionnaire.**

Item 7: Secondary Legislation

Item 7.1 Appeals under S44A of the Criminal Procedure (Scotland) Act 1995
[Papers 7.1 and 7.1A-D]

29. Inez Manson spoke to the content of Papers 7.1 and 7.1A and invited the Committee to consider the draft rules which amend the Child Care and Maintenance Rules to make provision for appeals under the new section 44A of the Criminal Procedure (Scotland) Act 1995 (“the 1995 Act”) as inserted by section 91 of the Children and Young People (Scotland) Act 2014.
30. Section 44A creates a new right of appeal to the sheriff against a local authority decision to detain in secure accommodation a child convicted of certain offences. This new right of appeal is intended to reflect, as far as possible, the appeal that exists in the children’s hearings regime, which already permits (under the Children’s Hearings (Scotland) Act 2011 and associated implementing regulations) an appeal to be made to the sheriff against a local authority’s decision to place a child in secure accommodation. The rules, along with the Scottish Government’s regulations made under section 44A(5) of the 1995 Act, make provision for the procedure to be followed in such appeals. The intention is for both the rules and the regulations to come into force simultaneously.
31. **Members indicated that they are content that the rules be submitted to the Scottish Civil Justice Council for consideration.**

Item 8: A.O.C.B.

32. The following issues were raised under this Item:

- It was suggested that consideration should be given to the setting up of a Court of Session Family Law User Group.
- It was brought to the Committee's attention that Children 1st had raised concerns about the confidentiality of evidence relating to children's services in civil cases.
- The Scottish Government has received representations about the nature and format of Child Welfare Hearings, and if appropriate, may bring a paper to a future Committee meeting once these have been considered further.

Item 9: Date of next meeting

- **The date of the next meeting is Monday 07 December 2015. It will be held at 9.30am in Parliament House.**

SCJC Secretariat

October 2015