

**SCOTTISH CIVIL JUSTICE COUNCIL
FAMILY LAW COMMITTEE**

MINUTES

PARLIAMENT HOUSE, MONDAY 23 February 2015

Members present: Lord Brailsford, Chair
Sheriff McCulloch
Lynda Brabender, Advocate
Clair McLachlan, Solicitor
Stephen Brand, Solicitor
Morag Driscoll, Director, Scottish Law Centre
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
Nicola Anderson, Policy and Legislation Branch,
Scottish Court Service
Ian Clark, Court Services Team, Scottish Court Service
Robert Marshall, Deputy Director, Care and Justice,
Scottish Government
Kirsty Doull, Care and Justice, Looked After Children
Unit, Scottish Government
John Thomson, Deputy Legal Secretary to the Lord
President
Anne Hampson, Policy Officer, Scottish Civil Justice
Council

Apologies: Sheriff Principal Stephen
Professor Margaret Ross, Head of the College of Arts
and Social Sciences, Aberdeen University

Item 1: Introduction, welcome, private papers and apologies

1. The Chair welcomed those present and noted apologies.

2. The Chair introduced:

- Robert Marshall, Deputy Director Care & Justice, Scottish Government, who attended the meeting to speak to Agenda Item 3.1;
- Kirsty Doull, Care & Justice, Looked After Children Unit, Scottish Government, who had recently joined the Scottish Government from Aberdeenshire Council on a 2 year secondment, accompanied Robert Marshall; and
- Ian Clark, Head of Research, Court Services Team, Scottish Court Service, who attended the meeting to answer any queries raised on research in relation to Agenda Item 6.1.

3. **The Committee agreed not to publish the following papers: Papers 4.1, 5.1, 5.1A, 5.1B, 5.2, 5.2A, 6.1, 6.1A and 6.1B**

Item 2: Minutes of Meetings [Paper 2.1]

4. **Subject to changing “2014” to “2015” at paragraph 7, the Committee approved the minutes of the previous meeting.**

Item 3: Directorate for Children and Families: Care and Justice – Scottish Government

Item 3.1: Update on Permanence and Care Excellence (PACE) [Oral]

5. Robert Marshall explained that evidence suggested it is taking too long for looked after children to achieve permanence. The PACE programme uses an improvement methodology to develop a ‘whole-system approach’ to deliver better outcomes for children. The PACE programme is being undertaken in partnership with the Centre for Excellence for looked after children in Scotland (CELSIS). Projects are currently taking place in Aberdeen City, Aberdeenshire and Renfrewshire Council areas. The aims are to reduce drift and delay for looked after children in achieving permanence; make Scotland the best place in the world for children to grow up; and reflect the needs and views of the child.
6. Robert explained that relevant leaders from these local authorities took part in a two day learning course and developed a series of stretch aims setting out specific improvements and timelines which they sought to bring about. The evidence so far indicated that these changes have already seen improvements. He suggested that PACE should be aligned with courts reform e.g. specialist sheriffs, Judicial training etc.”

7. Robert also noted that a key factor in effecting change was the “buy in” to the project from senior leaders in each stakeholder group. Discussion followed around resources, data collection, training and how to engage more generally with relevant partners and Robert offered to share papers with members and to provide a further update to the FLC in 6-12 months.
8. **Members indicated that the update had been interesting and helpful. The Committee was supportive of the project and noted the progress that had already been made along with the challenges ahead.**

Item 4: Forward work programme

Item 4.1 Work Tracker [Paper 4.1]

9. **The Committee noted the work tracker.**

Item 5: Secondary Legislation

Item 5.1 –Child Welfare Reporters [Papers 5.1 and 5.1A-C]

10. The SCJC agreed at the 27 October 2014 meeting that it was content that revised draft rules be prepared for consideration at the next FLC meeting. Members also agreed that the revised draft rules should be shared with the Scottish Government’s sub-group on child welfare reporters (“the group”). The draft was shared with the group and considered at its meeting on 22 January 2015. The chair of the group has since written to the Committee responding to the draft rules.
11. John Thomson spoke to the content of **Papers 5.1 and 5.1A** and invited the Committee to discuss the issues raised in Paper 5.1 and, in particular, the interlocutor and the timescale for the production of the report which were the main focus of the group’s letter.
12. **Following discussion around the issues raised and the various options proposed by members for progressing the rules, the Committee agreed that:**
 - **in order to assist the Committee in its further deliberations, LPPO should prepare an illustrative revised draft providing for the optional use by sheriffs of a checklist that can be annexed to the interlocutor, and that sets out the enquiries that reporters are commonly required to undertake; and**

- **the rules should specify that the child welfare reporter's report should normally be submitted to parties at least three working days prior to the hearing at which it is to be considered.**

Item 5.2 – Child Support Fees [Paper 5.2 and 5.2A]

13. The Child Maintenance Service (an executive agency of the Department for Work and Pensions) proposed that, as a result of the Child Support Fees Regulations 2014, Number 612, existing prescribed forms contained in the Act of Sederunt (Child Support Rules) 1993 will need to be amended.
14. John Thomson spoke to this item and advised that while the forms in question required to be modified along the lines proposed, a requirement for modifications to a number of other forms in the 1993 Rules has also been identified. Following meetings with representatives of the DWP and their Scottish agents it had been agreed that it makes sense to review all the forms in the Schedule.
15. **The Committee indicated that it was content that amended Forms in the Schedule to the Act of Sederunt (Child Support Rules) 1993 be submitted for consideration at the 13 April 2015 FLC meeting.**

Item 5.3 – Appeals under section 44A of the Criminal Procedure (Scotland) Act 1995 [Oral]

16. The Committee agreed at its 27 October 2014 meeting that provision for appeals under the new section 44A of the Criminal Procedure (Scotland) Act 1995 should be included in the Child Care and Maintenance Rules and that following further engagement with Scottish Government officials, draft rules should be drawn up for consideration at a future FLC meeting.
17. John Thomson advised members that it has not been possible to progress the draft rules as we have not had sight of the Scottish Government's draft regulations which it proposes to make under section 44A(5) of the 1995 Act. Simon Stockwell advised that the team dealing with this issue are meeting this week and will be in touch following that. **Members noted the update.**

Item 6: Research Project

Item 6.1 Case Management in Family Actions – Research Proposal [Papers 6.1 and 6.1A-B]

18. The FLC agreed at its 27 October 2014 meeting that a research brief be developed and that consideration should be given to consolidating the two suggested research proposals on the operation of Chapter 33AA OCR and the operation of case management in sheriff court family actions more generally. **Paper 6.1** provided members with a proposed approach to the development of a more detailed research brief.
19. Anne Hampson provided a brief update on the research models which SCJC Secretariat is currently exploring and of the budget that is likely to be available to carry out the research project during 2015-16.
20. Ian Clark outlined phase one of the research proposal indicating that this could be carried out in-house. Depending on the outcome from this, should the Committee still have concerns, further research could be commissioned.
21. **The Committee was supportive of the two phased approach and agreed that:**
 - **the administration of questionnaires to sheriffs be a primary phase of research; and**
 - **a draft questionnaire should be prepared for the next FLC meeting.**
22. **Members suggested that some preliminary desk research would be worthwhile, for example considering what has worked well in family law case management in other UK jurisdictions.**

Item 7: A.O.C.B.

23. Sheriff McCulloch indicated that he had received a letter from the Scottish Children's Reporter Administration (SCRA) in relation to the need for rules to enable the prohibition of parties from personally examining witnesses in proceedings under the Children's Hearings (Scotland) Act 2011.
24. Anne Hampson advised that this matter had previously been considered by the Committee at its 24 June 2013 meeting and that, following discussion, the FLC agreed that it was not yet in a position to express a

view on the SG proposed policy and that clarification should be sought. A further paper was submitted to the 2 June 2014 meeting advising that the Scottish Government proposed to keep the need for proposed new rules under review and to provide a further update to the FLC should new evidence emerge as to the desirability of a change in the rules.

25. This item is on the SCJC Work Tracker and a meeting between Secretariat, LPPO and Scottish Government officials to discuss further representations from SCRA took place on 5 February 2015. Following that meeting the Scottish Government advised that they would discuss the matter further with SCRA and provide an update in due course as to whether another paper would be prepared for the FLC.

26. Members noted the issue and will await a further update from the Scottish Government.

Item 8: Date of next meeting

- **The date of the next meeting is Monday 13 April 2015.**
- **Members were requested to inform SCJC Secretariat of their availability for a further meeting on either Monday 25 May or Monday 22 June 2015.**

SCJC Secretariat
February 2015