

MEETING OF THE SCOTTISH CIVIL JUSTICE COUNCIL
FAMILY LAW COMMITTEE
MONDAY 25 MARCH 2019 AT 10 AM
JUDGES' DINING ROOM, PARLIAMENT HOUSE, EDINBURGH

MINUTES

Members Present: Lord Brailsford (Chair)
Lynda Brabender QC (SCJC member)
Fiona Campbell (Solicitor)
Rachael Kelsey (Solicitor)
Sheriff Principal Pyle
Simon Stockwell (Scottish Government representative)
Marie-Louise Fox (Scottish Legal Aid Board representative)

In attendance: Nicola Anderson (SCTS LIT observer)

Support: Inez Manson (Deputy Legal Secretary, Lord President's Private Office)
Mariel Kaney (Deputy Legal Secretary, Lord President's Private Office)
Kelly Jack (Policy Officer, SCJC)
Andrea Campbell (Secretariat Business Manager, SJC)

Apologies: Yvonne Anderson (SCTS Court of Session observer)
Ian Maxwell (SCJC member)
Alison Reid (Clan Childlaw)
David Smith (SCTS LIT observer)
Sheriff Fiona Tait

Item 1: Welcome, apologies and agreement of private papers

1. The Chair welcomed those present and introduced Sheriff Principal Pyle and Alison Reid, who have been appointed to the Family Law Committee ("the Committee"). Sheriff Principal Pyle was appointed to the Committee as Sheriff Principal Lewis' replacement with effect from 19 November 2018. Sheriff Principal Pyle has been the Sheriff Principal of Grampian, Highland and Islands since 2012. Alison Reid replaced Fiona Jones with effect from 21 January 2019. Alison

co-founded Clan Childlaw in 2008 and is currently its Chief Executive and Principal Solicitor.

2. The Chair informed the Committee that Professor Frances Wasoff had recently resigned from the Committee and has been thanked for her valuable contribution.
3. The Chair informed the Committee that this would be Inez Manson's last meeting as Lord President's Private Office support. The Committee thanked Inez for her contribution to the Committee and wished her well for the future. Inez confirmed that support going forward would be provided by Mariel Kaney.
4. It was noted the Secretariat had restructured, splitting the functions of the team between policy development activity and general administration. Kelly Jack and Andrea Campbell of this team attended this meeting and were welcomed by the Chair.
5. Apologies were noted from Sheriff Tait, Yvonne Anderson, Alison Reid, Ian Maxwell and David Smith.
6. **The Committee agreed not to publish the following papers: 2.2: 3.2: 4.1: 4.1A-B.**

Item 2: Previous meeting

Item 2.1 – Minutes of previous meeting (Paper 2.1)

7. **The Committee approved the minutes from the previous meeting.**

Item 2.2 – Progress of actions from previous meetings (Paper 2.2)

8. **The Committee noted the progress made on actions since the last meeting.**
9. Lynda Brabender QC informed the Committee that at its 18 March 2019 meeting, the Scottish Civil Justice Council ("the Council") reviewed its priorities for 2019/20. The Council noted that work on simplified divorce proceedings is not on its main priority list. From the Council's perspective, drafting work is complete and the Council is ready to consult on draft rules. The Scottish Government has previously committed to running a consultation on proposals to extend the simplified procedure for divorce and dissolution to cases including children under 16 and this is still to be done. Simon Stockwell advised that further work is required before the Scottish Government will be able to launch its consultation . He confirmed that he has a note of the actions required and anticipates the consultation will be launched circa Spring/Summer of 2019. The Council has previously agreed that its consultation on the draft rules which give effect to the

proposed extension, will run concurrently with the Scottish Government's consultation.

10. Simon Stockwell informed members about a recent meeting between the Scottish Government and National Records of Scotland ["NRS"] concerning the number of divorce and dissolution extracts ("NRS") received by NRS from SCTS for inclusion in the statutory Registers. It was hoped NRS would soon start to receive again material that could be used in the Registers. and the possibility of running a pilot project to include these in the Register.

Item 3: Work Programme

Item 3.1 – Update from the Scottish Government on legislative developments (Oral)

11. Simon Stockwell gave an update on legislative developments in the Scottish Government and intimated that the Age of Criminal Responsibility (Scotland) Bill completed Stage 2 on 7 February 2019. He anticipates that a policy paper will be provided to Council by the end of the year on potential rules of court.

Item 3.2 – Business Tracker (Paper 3.2)

12. Andrea Campbell gave an update on the new business structure of the Secretariat. The administrative and policy functions of the team have been separated. The policy team will have more time for research and analysis and to engage with stakeholders. The business manager will be responsible for the administrative work for meetings and will deploy project based methodology to manage Council and committee business.
13. **Members noted Paper 3.2 which provided an update of the Committee's work.**

Item 4: Rules review and implementation procedures:

Item 4.1 – Case Management of Family and Civil Partnership Actions in the Sheriff Court (Papers 4.1 and 4.1A-B)

14. The Committee considered and provided views on **Papers 4.1A-B**. The papers set out recommendations for taking forward procedural changes to court rules following the FLC sub-committee's detailed consideration of responses to the consultation on case management of family and civil partnership actions in the sheriff court.

15. The Committee recognised that practitioners currently face difficulties advising clients of the timetable and potential costs involved in a family action. The Committee discussed whether the new set of rules should be prescriptive to provide more structure and predictability to an action or flexible to provide for potential contingencies. Some members expressed the view that the rules should set out a clear timetable that would apply in *all* cases, and should not build in much margin for discretion at all. They thought that the Court of Session rules on family actions could be looked at as a guide. There was some discussion about the difference between Court of Session and sheriff court family actions. The Committee agreed that the formulation of new rules should be given the highest priority. It was recognised that the Committee would need to clarify some policy points as the work progressed.
- 16. The Committee instructed the preparation of an initial draft instrument, with a suggested outline / structure for new draft rules.**

Item 4.2 – Request for Court Rules: Court of Session Family Actions User Group (Paper 4.2)

17. Inez Manson informed members that **Paper 4.2** originated from a proposal of the Court of Session Family Actions User Group in respect of Chapter 49 of the Rules of the Court of Session (“RCS”). She invited the Committee to consider their proposal by bringing forward the last date for adjustment, lodging productions and lodging witness lists.
18. Inez explained that rule 49.33(3) provides: ‘*Notwithstanding the pronouncement of an interlocutor under paragraph (2), the parties may adjust their respective pleadings until 28 days before the diet of proof...*’. For the reasons set out in **Paper 4.2**, the Committee agreed that the existing ‘28-day rule’ should be replaced with a ‘56-day rule’. This would involve the amendment of rule 49.33(3) and the insertion of a new rule 49.33A covering the lodging and intimation of productions and witness lists.
- 19. The Committee invited the Court of Session Family Actions User Group to prepare an initial draft of court rules for consideration by the Committee at a later date.**

Item 7: A.O.C.B.

20. Lynda Brabender QC highlighted concerns relating to rule 35(1)(b)(vii) of the Act of Sederunt (Sheriff Court Rules Amendment) (Adoption and Children (Scotland) Act 2007) 2009, which provides that the sheriff must “(ii) *fix a diet of proof not less than 12 and not more than 16 weeks after the date of the preliminary hearing or any continuation thereof unless, on cause shown, a longer period is*

appropriate; weeks not less than 16". She said that this rule is routinely ignored, and that permanence order proofs are taking over 12 months. **The Committee agreed to invite the Scottish Courts and Tribunals Service and sheriffs principal to provide information on the adherence to rule 35(1)(b)(vii) and timetabling practices, and to report back to the Committee.**

21. Ms Brabender noted that Scottish Civil Courts Reform recommendations 64 and 68 are not within the scope of the case management work being progressed by the Committee. It was noted that recommendation 68 (disclosure) would likely require primary legislation so will not be taken forward by the Committee at this stage.

22. Ms Brabender also suggested that a rule allowing the court *ex proprio motu* to transmit a case from the sheriff court to the Court of Session (or vice versa) would be useful. The Committee agreed to consider this. The Scottish Government agreed to consider it further and to liaise with SLAB on the legal aid implications.

23. Nicola Anderson intimated that the SCTS IT team has offered the assistance of a service designer who could engage with users with a view to developing a means of electronic submission of the Form F9.

24. No other business was raised.

Item 8: Dates of future meetings

25. Members noted that the date of the next meeting will be issued via email in due course.

**Scottish Civil Justice Council Secretariat
March 2019**

THIS PAGE IS INTENTIONALLY BLANK